my 10.79 arg'd for pltf in error. Left sub. M. Hyman

9 Otto 138
Oct. 2. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 169.

EDWARD W. BURBANK, PLAINTIFF IN ERROR,

vs.

THOMAS J. SEMMES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 29, 1876.

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1 *Petition.—Filed December 27th*, 1869.

STATE OF LOUISIANA,
City of New Orleans:

Fourth district court for the parish of Orleans.

THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 23327.

To the honorable the fourth district court for the parish of Orleans:

The petition of Thomas J. Semmes, who resides in New Orleans, with respect represents that he is sole owner and absolute proprietor of a certain lot of ground, situated in the first district of the city of New Orleans, in the square bounded by Annunciation, St. Thomas, Benjamin, or Thalia, and Edward or Melpomene streets; said lot is the front part of a lot designated by the number fifteen (15) on a plan drawn by B. F. Nichols, architect, dated 31 May, 1853, and deposited in the office of T. O. Stark, notary public, in this city, as plan No. 203; the whole of said lot No. 15 was acquired by Mrs. Abigal L. Slark, from B. M. Whitlock, by act passed before said Stark, 26 June, 1857, and measures twenty-two feet ten inches and three lines front on Edward street, seventeen feet in width in the rear, and one hundred and twenty feet eleven inches seven lines in depth on the division line of lot No. 14 on the same
2 plan, and one hundred and twenty feet on the opposite line; and the front part of said lot No. 15, owned by the petitioner, measures twenty-two feet ten inches and three lines front on Edward street by a depth of sixty feet, and was acquired by petitioner from the said Mrs. Slark, by an act of exchange passed on the 19th May, 1858, before D. J. Richards, late a notary in this city, a duly certified copy whereof is hereto annexed as part hereof.

Petitioner avers that in the year 1859 he erected valuable buildings on said lot, and otherwise improved the same, and said lot and buildings are worth ten thousand dollars.

Petitioner avers that on the 17th June, 1865, one Edward W. Burbank unlawfully obtruded himself into and took possession of said lot and buildings, and has ever since withheld and now unlawfully withholds possession of the same from petitioner.

Petitioner avers that the annual value of said premises is one thousand dollars.

Wherefore he prays that said Edward W. Burbank, who resides in the parish of Jefferson, be cited, and after due proceedings, your petitioner be adjudged the lawful owner of said lot of ground and improvements, and entitled to the possession thereof, and that said Burbank be decreed to surrender possession to petitioner, and that the sheriff do put petitioner in possession, and that said Burbank be decreed to pay petitioner five thousand dollars, the annual value of the premises,
3 and one thousand dollars per annum to accrue pending this suit until possession is restored to petitioner, under decree of this court, and interest from judicial demand and costs, and petitioner prays for all general relief.

(Signed) SEMMES & MOTT,
Att'ys for Pet'r.

Document annexed to petition.—Exchange of property, filed December 27, 1869.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that this day, before me, Daniel Israel Ricardo, a notary public in and for the city and parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared M'r's Abigail L. Armitage, of lawful age, and wife of Robert Slark, of this city, and by her said husband herein duly aided, authorized, and assisted; and with her also came and appeared Thomas J. Semmes, also of this city; which said appearers declared that they are the bona fide and sole owners separately of the following described property, to wit:

The said Thomas J. Semmes, of a certain lot of ground situated in the first district of this city, in the square bounded by Annunciation, S't Thomas, Edward, and Benjamin streets, and designated by the No. (14) or plan by B. F. Nicholas, architect, dated 31st May, 1853, and deposited in the office of T. O. Stark, notary, as No. 203, measuring twenty-
4 two feet ten inches and three lines front on Edward street, by seventeen feet width in the rear, one hundred and twenty-one feet seven inches and three lines in depth on division-line of lot No. 13, and one hundred and twenty feet eleven inches and seven lines on the line dividing it from lot No. fifteen, acquired by said T. J. Semmes from B. M. Whitlock, by act before T. O. Stark, notary, on the 21st day of June, 1857, together with other property.

And the said M'r's Slark, of a certain lot of ground designated by No. 15 on the same plan, situate in the same square and faubourg or district, and adjoining the lot above described, and measures twenty-two feet ten inches and three lines front on Edward street, seventeen feet in width in the rear, one hundred and twenty feet eleven inches seven lines in depth on division-line of No. 14, and one hundred and twenty feet on the opposite line acquired by M'r's Slark from the aforesaid B. M. Whitlock, by act before the same notary, on the said 26th day of June, 1857.

And the said appearers, moreover, declared that they have mutually agreed to exchange, transfer, and cede each to the other the portions hereinafter described of their respective lots, as follows, to wit:

The said M'r's Abigail L. Slark, duly aided, authorized, and assisted as aforesaid, and for consideration hereinafter received by her, does by these presents exchange, cede, transfer, and set over unto the said Thomas J. Semmes, here present, accepting the same for himself, his heirs and assigns, and acknowledging delivery and possession
5 thereof, the whole of the front portion of the aforesaid lot No. 15, measuring twenty-two feet ten inches and three lines front on said Edward street, by a depth of sixty feet only, together with all rights, &c., thereunto appertaining.

And in consideration of the foregoing the said Thomas J. Semmes does by these presents exchange, cede, transfer, and set over unto the said Mrs. Abigail L. Slark, duly authorized as aforesaid, also present and accepting for herself, her heirs, and assigns, and acknowledging delivery and possession thereof, the whole of the rear portion of the said lot No. fourteen, commencing at a depth of sixty feet from the front on Edward street, with all the balance of the depth thereunto belonging, together with all improvements, rights, &c. To have and to hold the said respective portions of ground unto the said parties, their heirs and assigns, to their proper use and behoof forever; and the said par-

ties, for themselves, their heirs, and assigns, the said portions of ground each to the other shall and will warrant and forever defend against the lawful claims of all persons whomsoever by these presents, hereby subrogating each other to all the rights and actions of warranty which they have or may have against their own vendors or all former vendors, with full power to exercise and enjoy the same as they might or could have done.

And the said parties moreover declared that they dispensed with certificates of the recorder of mortgages in and for this city and
6 & parish, as required by article 3328 of the civil code of this State, and exonerates the undersigned notary from all blame or liability in the premises.

And the parties hereto declared that they hereby assume all the taxes which may be now due each on his or her respective portion, and obligaee and bind themselves to pay the same whenever they may be demanded.

And now to these presents personally came and intervened Mistress Myra E. Knox, of lawful age, and wife of said Thomas J. Semmes, who did declare unto me, notary, that it is her wish and intention to release in favor of the said Mrs. Slark the property herein described, from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with the said Thomas J. Semmes or otherwise.

Whereupon I, the said notary, did inform the said Mrs. Semmes verbally, apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage upon the property of her said husband: First, for the restitution of her dower and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. Secondly,
for the restitution and reinvestment of the dotal property by her
7 acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected. Thirdly, for nuptial presents. Fourthly, for debts by her contracted with her said husband; and, fifthly, for the amount of her paraphermal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband.

And the said Mrs Semmes did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband; and that, availing herself of the right secured to her by the second section of an act passed by the legislature of this State, authorizing wives to make valid renunciations, etc., approved on the twenty-seventh day of March, eighteen hundred and thirty-five, she nevertheless did persist in her intention of renouncing, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever, to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Thomas J. Semmes being now present, aiding and authorizing the said Mrs. Semmes in the execution of these presents, she has, the said Mrs. Semmes, did again declare that she did and do
hereby make a formal renunciation and relinquishment of all her
8 said matrimonial, dotal, paraphernal and other rights, claims and privileges in favor of the said Mrs. Slark, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed, in my office, at the said city of New Orleans, in the presence of Nicholas Johnson and Clement G. Hearsey, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said notary, on this nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

(Original signed) MYRA E. SEMMES.
" ABIGAIL L. SLARK.
[SEAL] " ROBERT SLARK.
" THO. J. SEMMES.
" D. I. RICARDO.
Not. Pub.

A true copy of the original.
New Orleans, May 22d, 1858.
(Original signed) D. I. RICARDO.
Not. Pub.

Citation for Ed. W. Burbank.

State of Louisiana, fourth district court for the parish of Orleans, in the city of New Orleans.

THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 23327.

Mr. Edward W. Burbank:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court for the parish of Orleans, in ten days after the service hereof, with the addition of one day for every ten miles of distance from your residence to this court.

9 Witness the honorable Paul E. Theard, judge of the said court, the 27th day of December, in the year of our Lord 1869.
(Signed) F. WALL,
Deputy Clerk.

Sheriff's return on citation.

Rec. Dec'r 26th, 1867, and on the 29th day of the same month and year served copy of the within citation and accompanying petition on Edward W. Burbank, defendant herein, in person. Ret. same day.
(Signed) PH. LACOSTE, *Dy Sh'ff.*
Sh'ff's fee, $1.00.

Answer of Ed. W. Burbank.—Filed January 10th, 1870.

Fourth district court for the parish of Orleans.

T. J. SEMMES
vs.
E. W. BURBANK.

And now into court, by the undersigned, his attorneys, comes Edward W. Burbank, defendant in the above-entitled and numbered cause, and,

in answer to plaintiff's petition, denies all and singular its allegations, excepting as may be hereinafter specially admitted.

Respondent admits his possession of the property claimed and described in plaintiff's petition.

10 And respondent, further answering, says that he is the owner and possessor, in good faith, of said property, in virtue of an application made to respondent on the 15th June, 1865, by the marshal of the United States for the then eastern district of Louisiana, in virtue of a writ of venditioni exponas, issued by the United States district court for the eastern district of Louisiana, in the suit entitled and numbered "The United States vs. Six Lots of Ground, property of T. J. Semmes," numbered 7643 of the docket of the said court; the original of the marshal deed thereof is on file in said suit 7643.

And now respondent, further answering, says that the said T. J. Semmes, at and subsequent to the 17th July, 1862, did act as a member of Congress of the so-called Confederate States of America; and which fact respondent pleads in bar to the present suit of said T. J. Semmes, in virtue of and in accordance with the provisions of the act of Congress, and specially the 5th section thereof, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved 17th July, 1862; and respondent alleges that said T. J. Semmes is one of the persons described in the said fifth section of said act of Congress.

And respondent further alleges that said T. J. Semmes, subsequent to the 17th July, being a citizen of the State of Louisiana and resident therein, as also while temporarily in the State of Virginia, was engaged

11 in armed rebellion against the Government of the United States, and aided and abetted said rebellion, and did not cease to aid, countenance, and abet said rebellion, and return to his allegiance to the United States within sixty days after public warning and proclamation, duly given and made on the 25th July, 1862, by the President of the United States; and which facts respondent pleads in bar to the present suit, in virtue of and in accordance with the provisions of, and specially the sixth section of the said act of Congress approved the 17th July, 1862, and the said proclamation of the President of the United States of the 25th July, 1862.

And respondent alleges that said T. J. Semmes is one of the persons described in the said sixth section of said act of Congress.

Wherefore respondent prays that said plaintiff's petition and claim be dismissed with costs.

(Original signed) FELLOWS & MILLS, *Att'ys.*

Order & continuance.—Extract from the minutes of February 7th, 1870.

THOMAS J. SEMMES *vs.* EDWARD W. BURBANK. } No. 23327.

This case is continued indefinitely.

Order & continuance.—Extract from the minutes of March 5th, 1873.

THOMAS J. SEMMES *vs.* EDWARD W. BURBANK. } No. 23327.

This case, fixed for trial this day, was ordered by the court to be continued by preference.

12 *Order & continuance.—Extract from the minutes of March 19th, 1873.*

THOMAS J. SEMMES *vs.* EDWARD W. BURBANK. } No. 23327.

This case, fixed for trial this day, was ordered by the court to be continued by preference.

Testimony.—Filed April 2d, 1873.

Fourth district court for the parish of Orleans.

T. J. SEMMES *vs.* E. W. BURBANK. } No. 23327.

Testimony taken in open court, April 2d, 1873.

Pl'ff offers in evidence act of exchange annexed to the petition marked "A," and act of sale dated 26th June, 1857, marked "B."

T. J. SEMMES, sworn in his own behalf, says:

I am the plaintiff in this case, and I am familiar with the property in dispute. This is the plan of the property, C. (document marked "C" offered in evidence by plaintiff.)

Q. Will you go and explain the whole transaction?

Ans. Under the act of 26th June, 1857, I acquired title to lot 16 & 17, fronting on Annunciation street, and lot 14th, fronting on Edwards street. M'r's Slark had purchased lots 18, 19, and 20, fronting on Annunciation street, and also purchased lot No. 15, fronting on Edward street. By an act of exchange in 1858 I gave to M'r's Slark the back part of lot No. 14, which I had purchased, fronting on Edwards street, and she gave me the front part of No. 15, fronting on Edwards street, thus giving
13 me a depth. The two lots, No. 16 and 17, of my purchase, fronting Annunciation street, are separated from lot No. 14 of my purchase, and by exchange with M'r's Slark I united my lots fronting Annunciation street by getting one-half of M'r's Slark's lot No. 15, fronting on Edwards street, and giving to her in exchange the back part of my lot No. 14.

Q. In that way you had a continuous front on Edwards street from the corner of Annunciation?

A. Commencing at the corner of Annunciation, I had at first a depth of 110 feet, then of 22.10 and 22.10, making 45 feet six, and 110 feet, making the whole 155 feet 8 inches; all the lots fronting on Annunciation street were 110 feet.

Q. In other words, I understand you to say that at the original sale, you purchased so many lots fronting on Annunciation street and one lot on Edward street?

A. Yes, sir.

Q. Then you exchanged with Mrs. Slark for the purpose of making your property an entirety you sold her the back of your lot on Edwards street and she sold you the front of the lot which she purchased on Edwards street?

A. That is it exactly. The only piece of ground that I claim in this suit is the piece of ground acquired by exchange from Mrs. Slark; it is therefore a question of identity. According to the description of the property in the marshal's deed it described my property as one-half

of lot No. 18 fronting on Annunciation street, all of lots 16 & 17 fronting on Annunciation, and all of lot 14 fronting on Edwards street, but no part of lot 15 fronting on Edwards street.

Q. It is a portion of lot No. 14 that you claim?

Q. Yes, it is a portion of lot No. 14.

14 Q. Was there any buildings on it on the 13th of June, 1865?

A. I suppose at the time that this suit was instituted that a portion of the buildings were upon this lot No. 15, but on measurement it has been ascertained that there was no portion of the buildings upon this lot No. 15 except the cistern.

(Pl'ff offers in evidence the transcript of record, No. 5669, U. S. circuit court.)

I will have to correct my testimony because I supposed that the marshal's deed corresponded with the title; I gave my testimony under that supposition, but I find on examination of the libel in this record that it does not correspond with the marshal's deed.

Q. In your examination you mention lot No. 14; did you mean that?

A. Lot No. 15 is the lot in controversy. I was speaking then advisely, as I supposed.

SAMUEL JAMISON, sworn for plaintiff, says:

I am familiar with the property which Mr. Semmes has been testifying about.

Q. Did you build the houses on Annunciation street for him?

A. Yes, sir.

Q. Have you examined and made any measurement of these lots lately?

A. Yes, sir; on the street I have.

15 Q. Will you state whether there is any building on lot No. 15 on Edwards street?

A. The cistern is the only improvement which is on lot No. 15.

Q. What is the rent of that property worth per annum, the portion belonging to M'r Semmes, about?

A. Lots like that are worth about $10 per month.

Cross-examination:

Q. I understand you to say that is the value of the lot without any buildings on it?

A. That is what I have paid for vacant lots like that.

Q. Have you stated whether there is any buildings on that one?

A. There is no building on it except a cistern.

Q. How do you know the exact location of this particular lot No. 15?

A. I measured back with my tape-line on Edwards street.

Q. What plan or title had you to go by?

A. I had no plan or title, but I knew it was 110 feet in front, that is, 110 feet from Annunciation street; I know the property well. I built all the improvements on it.

Q. You have put improvements?

A. Yes, sir.

Q. You had a contract?

A. Yes, sir.

Q. Does not that show what lots the buildings are on?

16 A. I suppose so; I haven't got the contract now, but I had it when I built the houses.

Q. To what purpose could that lot be put to as it is now?

A. Very often people wants lots; I rent lots to put river sand in, lumber, and for various purposes.

Q. Have you rented lots up there in that neighborhood?

A. Yes, sir.

Q. What dimensions were the lots you rented?

A. I rented a lot up Magazine street, about as far up as that is, 122 feet, and I gave $10 a month for it.

Q. What is the depth of this lot on the basis of $10 a month for the lot you rented?

A. About 100 to 120 feet; the lot that the cistern belongs to is worth much more.

Q. Do you remember what the front of this lot with the cistern on it is?

A. About 22 feet.

By M'r Mott:

Q. Hasn't that lot, No. 15, a special value with reference to the front lots upon which the houses are built?

A. Yes, sir.

Q. What would that lot be worth with the cistern on it, the rent of it, to the person occupying the front lot, per annum?

A. If they couldn't put the cistern anywhere, else it would be valuable. I think that lot would be worth to the front lot about $12 a month.

17 *Document marked "A" (act of exchange annexed to petition, offered in evidence by plaintiff) already copied at page 4.*

Document marked "B" (act of sale, dated June 26th, 1857, offered in evidence by plaintiff).

STATE OF LOUISIANA,
Parish of Orleans:

Be it known that this day, before me, Theodore O. Stark, a notary public in and for said State and parish, duly commissioned and qualified, personally came and appeared George W. Helme, esq., of this city, herein acting as the agent and attorney-in-fact of Benjamin Morris Whitlock, of the city and State of New York, by virtue of a power of attorney executed on the 13th day of June, 1857, before Sylvester Lay, a commissioner of the State of Louisiana, in and for the State of New York, said power of attorney being hereto annexed, who declared that for the consideration hereinafter mentioned, and in his aforesaid capacity, he does by these presents grant, bargain sell, and deliver unto Thomas J. Semmes, esq., of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, three certain lots of ground, with all the buildings and improvements thereon, rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the first district of this city, in the square bounded by Annuncation, St.
18 Thomas, Edward, and Benjamin streets, and designated as lots Nos. fourteen, sixteen, and seventeen, on a plan drawn by B. F. Nichols, architect, dated the 31st of May, 1853, and deposited in this office as plan No. 203. Lot No. fourteen measures twenty-two feet ten inches and three lines front on Edward street, seventeen feet in width in the rear, one hundred and twenty-one feet seven inches and three lines in depth on the line dividing it from lot No. thirteen, and one hundred and twenty feet eleven inches and seven lines on the line dividing it from lot No. fifteen. And lots Nos. sixteen and seventeen measure each twenty-four feet front in Annunciation street by one hundred and ten feet in depth between parallel lines, lot No. sixteen forming the corner of Annunciation and Edward street', which said property was pur-

chased by said vendor from William P. Converse, by act passed before George Rareshide, notary in this city, on the 20th June, 1853, and is free of mortgage in the name of said vendor, as appears from the certificate of the recorder of mortgages for this parish annexed in the margin hereof; to have and to hold the said property unto the said Semmes, purchaser, his heirs and assigns, forever. And the said Whitlock, vendor, the said property herein conveyed to the said purchaser, his heirs andassigns, shall and will warrant and forever defend against all legal claims and demands whatsoever; and the said vendor does hereby, moreover, transfer unto the said purchaser all and singular the rights
19 and actions of warranty to which he is or may be entitled against any and all former owners of the property herein conveyed, hereby subrogating the said purchaser in and to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have by the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of four thousand six hundred and fifty dollars, in part payment whereof the said purchaser has paid the sum of eleven hundred and sixty-two $\frac{50}{100}$ dollars in ready current money at the execution of these presents, and for the balance of said price has furnished his four promissory notes for the sum of eight hundred and seventy-one $\frac{75}{100}$ dollars each, drawn to the order of and endorsed by himself, dated the 23d day of May, 1857, and payable at the Union Bank of Louisiana, respectively, on the 1st January, 1858, 1st of July, 1858, 1st of January, 1859, and 1st of July, 1859, all bearing interest at the rate of six per cent. per annum from date to maturity; and thereafter, if not then paid, at eight per cent. per annum until final payment.

Which said notes, after having been paraphed by me, notary, to identify them herewith, were delivered to said George W. Helme, who in his aforesaid capacity acknowledges the receipt thereof, as well as of the said ready money.

20 And in order to secure the punctual payment of said notes in principal and interest, the said purchaser hereby specially mortgages and hypothecates the herein conveyed property in favor of said vendor, or any future holder or holders of said notes, promising and binding himself not to alienate or encumber the same to the prejudice of this mortgage.

By reference to the power of attorney, herein before referred to, it will appear that M'r's Amelia Mott, wife of said Benjamin M. Whitlock, has made a final renunciation of all her rights, privileges, and mortgages on the herein conveyed property.

Thus done and passed in my office in the city of New Orleans, in presence of Edward Allen and James B. Williams, s'r, witnesses of lawful age, and domiciliated in said city, who sign these presents, together with the parties and me, said notary, this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

(Original signed) THOS. J. SEMMES.
GEO. W. HELME.
E. ALLEN.
J. B. WILLIAMS, JR.
THEODORE O. STARK,
Not. Pub.

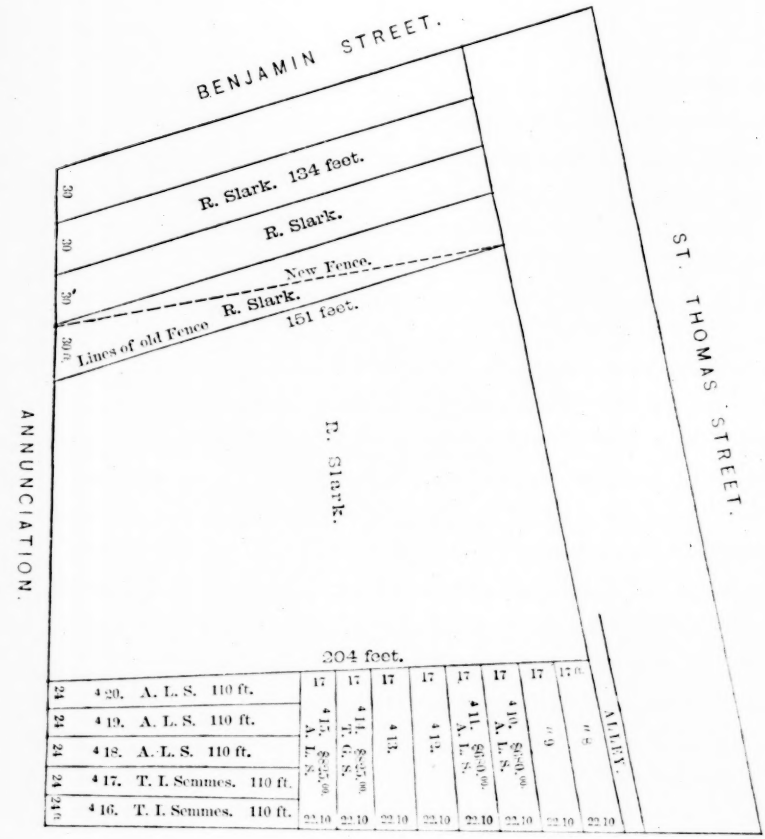
A true copy of the original on file and of record in my office.
New Orleans, July 3d, 1857.

(Original signed) THEODORE O. STARK,
Not. Pub.

Plan marked "C."

OFFERED IN EVIDENCE BY PLAINTIFF.

Filed April 2d, 1873.



(Indorsed:)—Plan offered in evidence by Plaintiff.

22 *Transcript of record No. 5669, circuit court of the United States, fifth circuit and district of Louisiana, offered in evidence by plaintiff.—Filed April 2d, 1873.*

THE UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
SIX LOTS OF GROUND THE PROPERTY OF Thomas J. Semmes, defendant in error. } No. 5669.

Transcript from the United States district court.—Filed October 10th, 1868.

District court of the United States for the district of Louisiana.

THE UNITED STATES
vs.
SIX LOTS OF GROUND THE PROPERTY OF Thomas J. Semmes. } No. 7643. In error to the circuit court of the U. S. dist. of Louisiana.

Libel.—Filed August 7th, 1863.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court in his own proper person, in the name and behalf of the said United States of America against the estate, property, money, stocks,
23 credits, and effects hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1. That James Graham, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney-General of the U. S. to the dist. attorneys thereof, and by virtue of the act of Congress approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the twenty-first day of July, in the year one thousand eight hundred and sixty-three, seized as forfeited to the United States at New Orleans, within said district, and within the jurisdiction of this court, a certain lot of ground situate in the first district, in the square bounded by Annunciation, S't Thomas, Edwards, and Benjamin streets, and designated by the number 14 on a plan drawn by B. F. Nichols, architect, and measuring 22 feet 10 inches 3 lines front on Edward street by 17 feet in width at the rear, 121 feet 7 inches, and 3 lines in depth on division line of lot No. 13, and 120 feet 11 inches and 7 lines on the line dividing it from lot No. 15; a certain piece or portion of ground situate in the 1st district of said city, in the square bounded by S't Thomas, Annunciation, Edwards, and Benjamin streets, said portion of ground measuring 12 feet front on Annunciation street by 110 feet deep

24 between parallel lines, which portion of ground makes part of lot No. 18, as per plan of B. F. Nichols, architect, and which portion of ground is bounded on one side by lot No. 17 on said plan and on the other side by the remaining portion of lot No. 18, together with all the improvements thereon, rights, privileges, &c.

Three certain lots of ground, with the buildings and improvements thereon, situate in the 1st district, in the square bounded by S't Thomas, Annunciation, Edward, and Benjamin streets, designated as lots Nos. 14, 16, and 17 on plan by B. F. Nichols, dated 31 May, 1853. No. 14 measures 22 feet 10 inches and 3 lines front on Edward street, 17 feet in width on the rear, 121 feet 7 inches and 3 lines deep on the line dividing it from lot No. 13, and 120 feet 11 inches on the line dividing it from lot No. 15. Lots Nos. 16 and 17 measure each 24 f't front on Annunciation street by 110 feet deep between parallel lines—lot No. 16 forming the corner of Edward and Annunciation streets. A certain lot of ground situate in the first district of the city of New Orleans, in the square bounded by Edwards, Estelle, Camp, and Magazine streets, being the rear portion of the lot designated No. 1 on a plan by A. D'Hemecourt, surveyor, dated 9 November, 1847. Said portion of ground hereby sold measures 27 feet 10 inches 5 lines on Edward street by a depth of 31 feet 11 inches 5 lines between parallel lines, English measure.

2nd. That the person who owns the said property, Tho's J. Semmes, whose domicil is in this city, is and was, on the 17th day of July, 1862, and previously thereto had been, the owner thereof.

25 3d. That certain States, forming a part of the territory and constituting a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation duly issued, and bearing date the first day of July, A. D. eighteen hundred and sixty-two, are now engaged, and were at the time said proclamation was issued engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

4th. That, by an act of Congress of the United States, approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

5th. That said Tho's J. Semmes, the person who owns the property herein seized, subsequently to the said 17th day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as a member of congress of the so-called Confederate States of America; that, while owning property in a loyal State or Territory of the United States, or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

6th. That the said T. J. Semmes, the person who owns the
26 said property, subsequently to the said 17th day of July, 1862, did act as governor of a State, or as member of a convention or legislature, or as judge of a court of one of the so-called Confederate States of America, to wit, the State of Louisiana; or did hold an office in the so-called Confederate States of America, after having held an office of trust or profit in the United States; or did hold an office or agency under the government of the so-called Confederate States of America, or under one of the States thereof, said office being national, State, or municipal in its name and character; which said office or

agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to or to support the constitution of the so called Confederate States.

7th. That the said T. J. Semmes, person who owns the said property, subsequent to the said 17th day of July, 1862, within a State or Territoty of the United States, was engaged in armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made by the President of the United States, on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

8th. That the said T. J. Semmes, person who owns said property, subsequently to the 17th day of July, 1862, within a State or Territory
27 of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not, within sixty days after public warning and proclamation duly given and made, on the 25th day of July, 1862, by the President of the United States, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

9th. That by reason of the premises, the property herein described, and all the right, title, interest, and estate of the said person or persons, whose property described herein became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore, the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them, at some early day to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant such further and other relief as law and justice may appertain and as this court is competent to give in the premises, and that, after due proceedings had, the said property may be condemned as forfeited to the United States of America, and he prays for general relief.

(Signed) RUFUS WAPLES,
U. S. Att'y for the E. D. of La.

28 United States dist. court, E. D. of Louisiana.

UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF T. J. Semmes. } No. 7643.

Whereas, six certain lots of ground situate in 1st district, and fully described in the libel of the dist. attorney now on file in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging, or in anywise appertaining, and all the right, title, and interest of said Thomas J. Semmes therein, has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes;" and whereas the United

States attorney for the eastern district of Louisiana did on the seventh day of August, A. D. 1863, file a libel of information in this court, praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner or owners of said property and real estate and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is, therefore, on this 8th day of August, in the year of our
29 Lord one thousand eight hundred and sixty-three, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 31st day of August, 1863, and show cause, if any they have, why said property and real estate, and the right, title and interest therein of the said Thomas J. Semmes, should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Era newspaper twice a week previous to said 31st day of August, A. D. 1863, the first publication to be on or before the 11th instant.

(Signed) E. H. DURELL, *Judge.*

NEW ORLEANS, *Aug.* 8, 1863.

The President of the United States of America, to the marshal of the eastern district of Louisiana or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the real estate, a full description whereof is hereto annexed as a part of this writ, together with all the improvements, buildings, privileges, and other hereditaments to the same belonging, and all the right, title and interest of Thos. J. Semmes therein, now libelled by the U. S. for the causes set forth in the libel now pending in district court of the United States for the district of Louisiana; that you do
30 cite and admonish the owner or owners and all and every other person or persons having or pretending to have any right, title, or interest in or to the same to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said real estate, &c., should not be condemned and sold agreeably to the prayer of libellant; and how you have executed this warrant that you make return according to law.

Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 8th day of August, 1863, and the 88th year of the Independence of the United States.

ALFRED SHAW, *Clerk,*
By K. LOEW, *D'y Clerk.*

United States district court.

UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF THOS. J. Semmes. } No. 7643. Warrant.

Marshal's return.

Rec'd August 8th, 1863, and in obedience to the within warrant seized and took into my possession the within described property,

posted copies of the libel of information, this warrant, and the order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in New Orleans,
31 on the 11, 15, 19, 22, 25, 29 Aug., 1863. Returnable 31st Aug., 1863.

(Signed) JAS. GRAHAM,
U. S. Marshal.

The description of property annexed to this writ is already copied in the libel of information.

Monition.

UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF THOMAS J. Semmes. } No. 7643.

In the United States district court, eastern district of Louisiana.

In obedience to a warrant issued in this court, to me directed, in the above entitled suit, I have seized and taken into my possession a certain lot of ground situate in the first district, in the square bounded by Annunciation, S't Thomas, Edward, and Benjamin streets, and designated by the No. 14 on a plan drawn by B. F. Nichols, architect, and measuring 22 feet 10 in. 3 lines front on Edward st. by 17 feet in width at the rear, 121 feet 7 in. 3 lines in depth on the division line of lot No. 13, and 120 feet 11 in. 7 lines on the line dividing it from lot No. 15.

A certain piece or portion of ground situate in the 1st dist. of said city, in the square bounded by S't Thomas, Annunciation, Edward, and Benjamin streets. Said portion of ground measures 12 feet front on Annunciation street by 110 feet deep between parallel lines, which portion of ground makes part of lot No. 18, as per plan by B. F. Nichols, architect, and which portion of ground is bounded on
32 one side by lot No. 17 on said plan, on the other side by the remaining portion of lot No. 18.

Three certain lots of ground situate in the 1st district, in square bounded by S't Thomas, Annunciation, Edward, and Benjamin streets, designated by the Nos. 14, 16, and 17, on plan by B. F. Nichols, dated 31st May, 1853. No. 14 measures 22 feet 10 inches 3 lines front on Edward street, 17 feet in width at the rear, 121 feet 7 inches 3 lines deep on the line dividing it from lot No. 15. Lots 16 and 17 measure each 24 feet front on Annunciation street by 110 feet deep between parallel lines. Lot No. 16 forms the corner of Edward and Annunciation street. A certain lot of ground *lot of ground* situate in the 1st district of the city of New Orleans, in the square bounded by Edward, Estelle, Camp, and Magazine st., being the rear portion of the lot designated No. 1, on a plan by A. D'Hemecourt, surveyor, dated 9th November, 1847. Said portion of ground measures 27 feet 10 inches 5 lines front on Edward street by a depth of 31 feet 11 inches 5 lines between parallel lines, English measure, together with all the improvements, buildings, *improvements*, rights, privileges, appurtenances and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of the said Thomas J. Semmes therein, now libelled by the U. S. for the reasons assigned and set forth in the libel in the above suit now pending in the said district court.

And I do hereby cite and admonish the owner or owners thereof
33 and all persons having or pretending to have any right, title or interest in or to the same to be and appear at a district court of the United States for the district aforesaid, to be holden in the city of New Orleans, on or before the 3d Monday from the date hereof, to show cause, if any they have or can, why the said above-described property should not be condemned and forfeited to the United States agreeably to the prayer of libellants.

U. S. marshal's office, New Orleans, 11 August, 1863.

JAS. GRAHAM,
U. S. Marshal.

Intervention of Merchants' Mutual Insurance Company, filed August 31, 1863.

To the honorable the judge of the United States district court for the eastern district of Louisiana:

The petition of intervention of the Merchants' Mutual Insurance Company, residing in New Orleans, in the judicial district of Louisiana, respectfully shows, that they are creditors of Thomas J. Semmes, formerly residing in New Orleans, for the sum of forty-five hundred dollars, being balance of note for $6,000 dated 5th March, 1860, with interest at 8% from date until paid, payable 12 months after date to himself, and endorsed. That said note was secured by mortgage to petitioners by act before J. W. Breedlove, notary public, dated 5th March, 1860, of the following property, a portion of ground situate in the 1st district, in square bounded by Annunciation, S't Thomas, Edward, and
34 Benjamin streets, having 60 feet front on Annunciation street by 156 feet 2 inches front on Edward st., and forms the whole of lots Nos. 16 and 17 and parts of number 18, fronting on Annunciation street, and parts of lots Nos. 14 and 15, fronting on Edward street, as per plan drawn by B. F. Nichols, architect, 31st May, 1853, as will more fully appear by the annexed certificate as also the note annexed. The copy of the act cannot be obtained at present, there not being a custodian of the acts of said Breedlove, who has left the State.

Your petitioners show that these lots belonging to said Semmes have been seized by the by process from this hon. court and are prayed to be decreed as forfeited to said States for misconduct and treasonable acts and doings of the said Semmes.

Your petitioners respectfully show that the conduct of said Semmes cannot in any manner affect their rights as mortgage creditors and that under the circumstances your petitioners have right of preference over these described lots and the proceeds thereof to the said United States, they therefore pray that in case sale may be ordered of said property they may be paid their debt with all interest and costs, or if the said property should be adjudged to be confiscated as to the said Semmes, yet as to your petitioners the said confiscation shall be adjudged to be subordinate and subject to the claim of your petitioners and that the said be ordered on behalf of your petitioners to be sold to
35 satisfy their demand of $4,500, with 8 % from 5th March, 1863, and costs of suit.

(Signed) L. PIERCE.

Chas. Lagory being duly sworn deposes that he is the president of the insurance company, the petitioners, and that the facts as are above alleged are all true and correct.

(Signed) CHAS. LAAJORY, *Prest.*

Sworn to and subscribed before me this 22d Aug., 1863.
A. MEUNIER, 2, *J. P.*

Note filed with intervention.

$6,000.] NEW ORLEANS, *March 5th*, 1860.

One year after date I promise to pay to the order of myself, the sum of six thousand dollars, value received, with interest at the rate of eight per cent. per annum from date until final payment.
(Signed) THOS. J. SEMMES.

(On the margin:) Ne varietur, New Orleans, March 5, 1860. J. Wood Breedlove, Not. Pub.

Endorsed:
Pay to the order of the Merchants' Mutual Ins. Co.
(Signed) THOS. J. SEMMES.
NEW ORLEANS, *February* 26, 1862.

Received twenty-three hundred and forty dollars on account of this note, leaving a balance due on 8th March, 1863, of forty-five hundred dollars.
(Signed) P. FOURCHY.

NEW ORLEANS, *March 5th*, 1861.

In consideration of five hundred and eighteen $\frac{40}{100}$ dollars, one year interest on this note, the payment thereof is hereby extended to 5-8th March 1862.
36 (Signed) JNO. PEMBERTON.

Mortgage certificate—Filed with intervention.

MORTGAGE OFFICE,

By act before J. W. Breedlove, notary, on 5th March, 1860, Thomas J. Semmes mortgaged in favor of the Merchants' Mutual Insurance Company, represented by John Pemberton, its president, a portion of ground situate in the 1st district in square bounded by Annunciation, S't Thomas, Edward, and Benjamin streets, and has 60 feet front on Annunciation street by 156 feet 2 in. and front on Edward street, and forms the whole of lots Nos. 16 and 17 and part of No. 18 fronting on Annunciation street, and part of lots Nos. 14 and 15 fronting on Edward st. as per plan drawn by B. F. Nichols, architect, on 31st May, 1853, subject to mortgage, B. 72, fo. 47, to secure payment of a promissory note for $6,000, dated 5th March, 1860, drawn and endorsed by said Semmes and payable one year after date, with eventual interest at 8 % per annum, costs, fees, &c., which note was paraphed by said notary.
New Orleans, March 5th, 1860.
(Signed) C. DARCANTEL,
Dy Recorder.

I certify the above to be a true copy of an inscription recorded in book B. M. 74, fo. 658, in my office.
New Orleans, Aug. 26, 1863.
(Signed) J. W. MADDEN,
Dy Recorder of Mortgages.

Default.—Sept. 8th, 1863.

37 UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } No. 7643.

The delay allowed by law having expired, and no claim or defence having been filed after due monition and proclamation, on motion of the dist. att'y, it is ordered that all persons interested in the property seized be pronounced in contumacy and default, and the libel adjudged and taken pro confesso. Extract from the minutes.

Exception of Dist. Att'y.—Filed Nov'r 6th, 1863.

U. S.
vs.
MERCHANTS' M. INS. CO., INTERVENTIONS in 6 lots of ground, property of T. J. Semmes. } No. 7643.

To the Hon. E. H. Durell, judge of the United States district court for the eastern district of Louisiana:

This libellant, Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who herein prosecutes for the United States in this behalf by protestation, and not confessing or acknowledging all or any of the matters and things in the said intervenors' bill to be true in such manner and form as the same are therein set forth and alleged, doth for exceptions to said bill of intervention allege and show that said bill of intervention is informal and insufficient as follows:

1ST EXCEPTION. For that said bill and petition of intervention shows that said claimants are residents of the State of L'a, which said State is in rebellion and open resistance to the Government of the U. S.,
38 and fails to disclose to this def't att'y as aforesaid in behalf as aforesaid who are the persons constituting the firm of Merchants' Mutual Insurance Company.

2 EXCEPTION.—For that said bill and petition of said intervenors shows no special lien on, or interest in, the specific property libelled in this case.

3D EXCEPTION.—For that said interventions by the said petition of intervention do not bring themselves within the act of Congress of the U. S. entitled "An act to protect the liens upon vessels in certain causes, and for other purposes," approved March 3, 1863, and made a part of this exception.

4TH EXCEPTION.—For that said intervenors have not given a stipulation, with sureties, to abide by the final decree in this cause to be rendered.

Wherefore the said Rufus Waples, attorney as aforesaid, who prosecutes as aforesaid, humbly demands w'ether he shall be compelled to make any further answer to said bill of intervention, or any of the matters or things therein contained, and prays that said bill of intervention be dismissed with costs.

(Signed) RUFUS WAPLES,
U. S. Att'y for the E. D. of L'a.

Answer of Dist. Att'y.

UNITED STATES
vs.
MERCH'TS' MUT. INS. CO., INTERVENORS IN 6 lots of ground, property of T. J. Semmes. } No. 7643.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

39 The answer of Rufus Waples, attorney of the United States of America for the said eastern district of Louisiana, who prosecutes herein for the United States in this behalf, to said bill of intervention exhibited by the Merchants' Mutual Ins. Co. in this cause:

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all right of exception to said bill of intervention of said Merchants' Mutual Ins. Company, for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering saith: That this defendant, attorney as aforesaid, in behalf as aforesaid, expressly denies that the said intervenors, the Merchants' Mutual Ins. Co., who constitute said firm, are loyal citizens of the United States.

Further answering, this defendant, attorney as aforesaid, insists that, by virtue of a certain act of the Congress of the United States, approved March 3d, 1863, and entitled "An act to protect the lien upon vessels in certain cases, and for other purposes," that in all cases now or hereafter pending wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts above mentioned, or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such ship, vessel, or other property, of any
40 bona fide claims which shall be filed by any loyal citizen of the United States or of any foreign state or power at peace and amity with the United States intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessels, or other property, under the laws of the United States or of any loyal State thereof: Provided, That no such claim shall be allowed in any case when the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property: And provided also, That this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property, in any loyal State wherein such claim arose, the said intervenors, Merchants' Mutual Ins. Company, are not entitled to any relief in this honorable court against the said property seized under said libel; and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause, and this d'f't as att'y aforesaid, in behalf as aforesaid, denies that said Tho's J. Semmes is indebted to said Merchants' Mutual Ins. Company in the manner and form as stated in said bill of intervention, without this, that there is any other matter, cause, or thing in the said intervenors' bill contained material or necessary for this defendant, attorney as aforesaid, to
41 make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true,

to the knowledge or belief of this defendant, attorney as aforesaid. All of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays that this honorable court will decree that said intervenors' bill be dismissed, with costs and charges in this behalf wrongfully sustained, as in duty bound will ever pray, &c.

(Signed) RUFUS WAPLES,
U. S. Dist. Att'y, E. D. of La.

Order taxing fee of U. S. att'y.—June 28, 1864.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

Ordered, that $360 be taxed as the fee due R. Waples, U. S. dist. att'y, for services rendered up to date.
June 27, 1864.

Intervention of the State of Louisiana.—Filed August 31, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
THOMAS J. SEMMES.

To the honorable E. H. Durell, judge of the district court of the U. S. in and for the eastern district of Louisiana:

The intervention of B. L. Lynch, attorney-general of the State of Louisiana, and in his said capacity representing said State, alleges and articulately propounds as follows: That the defendant herein is in-
42 debted unto the said State of Louisiana, herein intervenor, in the sum of $114.40 for this, to wit: That in the year 1861 an assessment was duly and legally made by the State assessor of the State of Louisiana of all the property within the limits of the parish of Orleans; that the said assessment-roll was duly adopted after the delay required by law, and show that the State tax of the said defendant amount to the sum of $55.48 for said year. That in the year 1862 an assessment was made in like manner and form as required by law, by the said State assessor, of all the property contained within the limits of said parish, and that the defendant herein stands assessed upon said assessment-roll of the year 1862, for the sum of $58.95 for property owned by him in the city of New Orleans during the latter year, which two sums hereinabove referred amount to $114.40, all of which will more fully appear from a certified copy of each of said assessment-rolls and other evidence to be produced upon the trial of this cause. That under and by virtue of an act of Congress, approved July, 1862, the proceedings in this case must conform as nearly as may be to proceedings in admiralty or revenue cases, and that, according to admiralty proceedings and jurisdiction, ordinary or general creditors may claim the property or proceeds of property brought into registry and to be disposed of or distributed by the court. That under and by virtue of the laws of the State of Louisiana, the property seized and taken into possession by the mar-
43 shal of the U. S. was, at the time of such seizure and taking into possession, pledged to the State of Louisiana in payment of her

claims as one of his creditors. That under and by virtue of the laws of the State of Louisiana, in such cases made and provided, intervenor has a lien and privilege upon the property seized by the marshal aforesaid, which lien and privilege is of a higher rank than any mortgage or other incumbrance whatever. That the said property at the time of such seizure, and previous thereto, was held and owned by said Thomas J. Semmes, subject to and encumbered with a lien and privilege for the payment of intervenor's claim, amounting as aforesaid to $114.40. That at the time of filing libel or information and at the time of seizure aforesaid by the marshal, intervenor was entitled by the laws of Louisiana to enforce her claim and demand specifically against the property seized and taken as aforesaid into the hands of the United States marshal. That all and singular the premises are true and within the jurisdiction of this court.

Wherefore intervenor prays that by an order of hon. court she may be authorized to appear and prosecute this intervention; that due process of law according to the course and practice of this court in like cases may issue; and that Rufus Waples, esq., dist. att'y of the U. S. for said district, may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to de-
44 clare, pronounce, and decree that the claim and demand of intervenor against the said Thos. Semmes, amounting to the sum of $114.40 as hereinabove set forth, be allowed; that judgment for said claim be rendered in favor of intervenor and against the said Thos. J. Semmes; that the lien and privilege aforesaid upon the lot of ground seized by the marshal *of* herein be recognized and enforced for the payment of intervenor's aforesaid claim, with her costs in this behalf expended; that in the event of this court proceeding to render judgment of condemnation against said lot, then that your honor, notwithstanding such condemnation and before awarding the aforesaid lot of ground or property or the proceeds arising therefrom to the U. S. or to any inferior or inferiors, person or persons whatsoever, will first provide for the payment by such lot, or its proceeds, if the same is sold at suit of government, of intervenor's claim and demand aforesaid; and that intervenor may have such other and further relief in the premises as in law and justice she may be entitled to receive, with her costs, &c.

(Signed) B. L. LYNCH,
Att'y Gen'l for Intervenor.

Sworn to and subscribed before me this 31st day of August, 1863.
(Signed) K. LOEW, *D'y Clerk.*

Tax bill referred to in foregoing intervention.

The State of Louisiana, 1st district of New Orleans.

45 Received of Mr. Mr. Thos. J. Semmes, the sum of $55.45, State tax for the year 1861, on the property designated on the other side, in conformity to law.

(Signed) W. T. STOCKER, *Coll'r.*

New Orl's, , 1864. $55.45. Per . Notified
, 1862.

Sq'r' 99, R. E., Annunciation	$18,000
Slave, 1	650
	$18,650

Tax bill for 1862.

The State of Louisiana, 1st district of New Orleans.

Received of M'r Thomas J. Semmes the sum of $58.95, State tax for the year 1862, on the property described on the other side in conformity to law.

(Signed) W. T. STOCKER, *Coll'r.*

New Orleans, , 1862. $58.95. Per . Notified , 1863.

Sq. 99, Annunciation	18,000
1 slave	850
Jewelry	1,000
	$19,850

September 6th, 1864.

Marshal's bill taxed as follows:

Fees	$19 50
Disbursements	48 18
	67 68

Extract from minutes.

Order or notice to take testimony.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

To Levi Peirce, Esq.:

46 You are hereby notified that testimony will be taken in the above-entitled cause on Thursday the 1st day of Dec'r, 1864, at the clerk's office at 12 m., on behalf of libellants.

N. O., Nov'r, 30, 1864.

(Signed) K. LOEW,
D'y Clerk.

Service.

Received Nov'r 30, '64, and on 1st Dec'r, '64, served a copy of the within notice on L. Peirce, esq., at his office by leaving it in the hands of J. W. Gurley, esq.

N. O., Dec'r 1, '64.

(Signed) M. EAGAN,
D'y U. S. Marshal.

Testimony of Donald McMickle, for libellant, taken Dec'r 1, '64.—*Filed 26th Dec'r*, 1864.

United States district court, east. district of Louisiana.

THE UNITED STATES
vs.
PROPERTY OF THOS. J. SEMMES. }

U. S. dist. att'y for libellant, before Chas Claiborne, U. S. com'r.

Donald McMickle, for libellants, sworn, deposes: I reside in New Orleans. I have been residing here for 15 or 16 years. I know Thos J.

Semmes. I have known him for 6 or 7 years. I saw him in Richmond in the winter of 1862 and 1863. He was a member of the Confederate congress. He was a senator. I saw him in his seat in the senate. I spoke to him in the senate. I heard him make a motion in the senate at that time. I saw him two or three different times in his seat in the senate. I saw him the last time in Jackson, Mississippi; this was in August, 1864. I spoke to him and he told me that he was going
47 to speak at Jackson that night. I left and did not hear his speech. I saw a report of it afterwards, but do not remember its contents. When I saw him in the Confederate senate in Richmond, he was exercising the functions of a Confederate senator.

(Signed) DONALD McMICKLE.

Sworn to and subscribed before me this 1st day of December, 1864.

(Signed) CHA'S CLAIBORNE, *U. S. Com'r.*

Notice to take testimony.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

To Levi Peirce, Esq.:

You are hereby notified that testimony will be taken in the above entitled cause, on Saturday, 24th Dec'r, 1864, at the clerk's office, at 1 p. m., on behalf of libellants.

(Signed) W. S. BENEDICT, *D'y Clerk.*

N. O., 22d Dec'r, 1864.

Service.

Rec'd Dec'r 22, 1864, and on the same day, month, and year served a copy of the within notice on Levi Pierce, esq., at his office, in the hands of J. W. Gurley, esq., att'y at law.

Dec'r 24, '64.

(Signed) M. EAGAN, *D'y U. S. Marshal.*

Order fixing cause for trial, Jan'y 6th, 1865.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

On motion of the U. S. att'y, R. Waples, esq., ordered that this
48 cause be assigned for trial on Monday, 16th January, '65, at 10 o'clock a. m., and that the parties interested be duly notified thereof.

Notice of trial.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

To B. L. Lynch and Levi Peirce, Esq'r's:

You are hereby notified that the above cause has been assigned for trial on Monday, the 16th day of January, 1865, at 10 a. m.

By order of court.

N. O., January 6, 1865.

(Signed) W. S. BENEDICT, *D'y Clerk.*

Service.

Rec'd 7th Jan'y, 1865, and on the 9th of same month and year served a copy of the within notice on Levi Peirce, esq., and B. L. Lynch, esq., in person, at their respective offices.

Jan'y 13th, 1865.

(Signed) M. EAGAN, *D'y U. S. Marshal.*

Bond for costs.

UNITED STATES OF AMERICA,

Eastern District of Louisiana, ss., to wit:

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana aforesaid, the Merchants' Mutual Insurance Co., by their pres't, Cha's Sagory, as principal, and Cha's Sagory as surety, do hereby acknowledge themselves, jointly and severally, to be indebted unto the U. S. of America in the full sum of $250, lawful money of the United States, to be levied of their goods, chattels, lands, and tenements for the use of the said United States, and for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents

49

Whereas in the matter of the United States vs. Property of Tho's J. Semmes, No. 7643 of the docket of the district court of the United States for the eastern district of Louisiana, a claim against said property has been filed on behalf of the Merchants' Mutual Ins. Co.

This obligation to be null and void on condition that the said Merchants' Mutual Ins. Co. shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise this obligation to remain in full force and virtue.

(Signed) CHA'S SAGORY, *Pres't.* [SEAL.]
(Signed) CHA'S SAGORY. [SEAL.]

Signed and sealed, at the city of New Orleans, this 12th day of January, 1865, in presence of—

K. LOEW,
Clerk to U. S. Com'r E. D. of La.

Hearing and continuance.—Extract from minutes of 16th January, 1865.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THO'S J. SEMMES. } 7643.

This cause was called up for trial, district attorney for libellants, when, after hearing the pleadings and evidence, the same was continued indefinitely.

Notice to take testimony.

50

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

To Cha's Claiborne and L. Pierce, Esq'r's:

You are hereby notified that testimony will be taken in the above-

entitled cause on Thursday, the 19th day of January, 1865, at the clerk's office, at 10 o'clock a. am.

N. O., January 18, '65.

(Signed) W. S. BENEDICT,
Dy Clerk.

Service.

Rec'd Jan'y 18th, 1865, and on the same day, month, and year served a copy of the within notice on C. Claiborne, esq., U. S. com'r, in person, and on Levi Pierce, esq., in the hands of J. W. Gurley, esq., at the office of said L. Pierce, esq.

New Orleans, Jan'y 19, '65.

(Signed) M. EAGAN,
Dy U. S. M.

Testimony on behalf of libellants.

U. S. dist. court east'n dist. of L'a.

U. S.
vs.
PROPERTY OF T. J. SEMMES.

Testimony taken in presence of dist. att'y, N. O., Jan'y 19, '65, at 10 a. m.

Harmon Doane, being duly sworn for libellants, deposes and says: I know M'r Tho's J. Semmes; I saw him in Richmond about a year ago. He was doing nothing to my knowledge when I saw him. He resided in this city before the war; he was represented by common report and by the public prints to be a senator of the so-called Confederate States; I have no doubt that M'r Semmes is a senator of the so-called Confederate States; I believe M'r Semmes sides with the enemies of the United States in this contest.

(Signed) HARMON DOANE.

51 Sworn to and subscribed before me this 19th January, 1865.
CHA'S CLAIBORNE,
U. S. Com'r.

Robert Dalton, being duly sworn for libellants, deposes and says: I know Mr. Tho's J. Semmes when I see him. I don't know that I ever saw him in Richmond. I believe I saw him at Jackson, Miss., about two years ago. The general report is that he is a senator of the so-called Confederate States of America; never saw him officiate as such. I was in the Confederate States service. I was in the 14th L'a Regiment, captain of Franko Guards, Co. A. I never heard Mr. Semmes make but one speech, and that was at New Orleans some years ago. He was then advocating the cause of Breckenridge and Lane. There is no doubt resting in my mind but that Semmes is a senator of the States aforesaid. I returned to this city about a year ago or more.

(Signed) ROBERT DALTON.

Sworn to and subscribed before me this 19 January, 1865.

(Signed) CHAS. CLAIBORNE,
U. S. Com'r.

Notice to take testimony.—January 23, '65.

U. S.
vs
PROPERTY OF T. J. SEMMES. } 7643.

To Levi Pierce and Ch's Claiborne, Esq'r's:

You are hereby notified that testimony will be taken in the above-entitled cause on Wednesday, the 25th day of Jan'y, 1865, at the clerk's office, at 1 p. m., on behalf of libellants.

N. O., Jan'y 23, '65.

(Signed) W. S. BENEDICT,
D'y Clerk.

Service.

52 Rec'd Jan'y 23, 1865, and on the 24th day of the same month and year served a copy of the within notice on Cha's Claiborne, esq., U. S. com'r, in person, and on L. Pierce, esq., in the hands of J. W. Gurley, esq., att'y at law, at the office of L. Pierce, esq.

Jan'y 24, '65.

(Signed) M. EAGAN,
D'y U. S. M.

Testimony for libellants.

U. S. district court, E. D. of L'a.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

Testimony taken in presence of dist. att'y, N. O, January 25, 1865.

Alexander White being duly sworn, deposes and says: I know Thomas J. Semmes by reputation and by sight. I knew him here and in the Confederacy, not personally acquainted with him, but knew him. He was in the rebel congress since the 17 July, 1862, and believe he is still a member of that congress. I believe he was formerly Attorney-General of the U. S.

(Signed) ALEX. WHITE.

Sworn to and subscribed before me this 25 January, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Com'r.

Joseph D. Howell, being duly sworn, deposes and says: I know M'r Thomas J. Semmes; knew him here and in the Confederacy. I think he was a member of the rebel congress since the 17th day of July, 1862, and believes he still holds that office. I believe he once held office under the Government of the United States.

53 (Signed) J. D. HOWELL.

Sworn to and subscribed before me this 25th January, 1865.

(Signed) CHS. CLAIBORNE,
U. S. Com'r.

Order, cause fixed for trial Jan'y 3, '65.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

On motion of R. Waples, U. S. Attorney, ordered that the cause be assigned for trial on the 3d February, 1865, at 11 a. m., and that the parties interested be notified thereof.

Notice.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

To Levi Pierce and B. L. Lynch, Esqrs.:

You are hereby notified that the above case has been assigned for trial on Friday, 3d Feb'ry, 1865, at 11 a. m.

Service.

Rec'd January 30, '65, and on the same day, month, and year served a copy of the within notice on B. L. Lynch, esq., personally, also a copy on Levi Pierce, esq., by leaving it at his office in the hands of J. W. Gurley, esq.

(Signed) M. EAGAN,
D'y U. S. Marshal.

Note of evidence taken on trial Feb'ry 3d, 1865.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

Libellants offered in evidence the monition, warrant, and marshal's return, the evidence of Donald McMickle, taken before U. S. Com'r Claiborne Dec'r 1, '64, that of Harmon Doane and Robert Dalton taken 19 Jan'y, '65, and that of Alex. White and Jos. D. Howell before
54 same com'r Jan'y 25, 1865.

Case laid over for further proof.

Hearing and continuance.—Extract from the minutes, Feb'ry 3d, 1865.

U. S.
vs
PROPERTY OF THS. J. SEMMES. } No. 7643.

This case came up for trial—district attorney for libellants. When after hearing the pleadings and evidence the cause was ordered to be laid over for further action.

Notice to take testimony.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

Levi Pierce, Esq.:

You are hereby notified that testimony will be taken in the above-

entitled cause on Monday, 6th February, 1865, at the clerk's office at 1 p. m. on behalf of libellants.

New Orleans, Feb'ry 4, '65.

(Signed) W. S. BENEDICT.

Service.

Rec'd Feb'y 4, '65, and on the same day, month and year served a copy of the within notice on Levi Peirce, esq. by leaving it in the hands of J. W. Gurley, esq., at the office of said L. Pierce, esq.

N. O., Feb'y 6, '65.

(Signed) M. EAGAN,
D'y U. S. M'l.

Notice to take testimony.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

To Levi Pierce, Esq.:

You are hereby notified that testimony will be taken in the above-entitled cause on Thursday the 9th Feb'y, 1865 at the clerk's office at 11 a. m. on behalf of libellants.

N. Orl's, Feb'ry 8, '65.

(Signed) W. S. BENEDICT,
D'y Clerk.

55 *Service.*

Ret'd Feb'y 8, '65 and on the same day, month, and year served a copy of the within notice on Levi Pierce, esq., by leaving it at his office in the hands of J. W. Gurley esq., att'y.

N. O. Feb'y 9, '65.

(Signed) M. EAGAN,
D'y U. S. M'l.

Testimony for libellants.

U. S. dist. court, E. D. of L'a.

UNITED STATES
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

Testimony taken in presence of dis't att'y before Ch's Claiborne, U. S. com'r, N. O., Febr'y 9, 1865.

John Holmes, being duly sworn, deposes and says: I know T. J. Semmes, formerly of this city. I knew him here. He was attorney general for the State of Louisiana. It is my belief that he is a member of the rebel senate. I last saw him in Clinton, L'a, two years ago last November. He had just then returned from Richmond, to the best of my belief.

(Signed) JN'O HOLMES.

Sworn to, and subscribed before me, this 9th Feb'ry, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Com'r.

Amended intervention.—Filed 21st Feb'y, 1865.

U. S. dis't court, E. D. of L'a.

U. S.
vs.
PROPERTY OF THO'S J. SEMMES. } No. 7643.

The amended and supplemental petition of intervention in this cause of the Merchants' Mutual Insurance Company with respect repre-
56 sents that the president and directors of the said Company are all loyal citizens of the U. S.; that they inadvertently omitted so to allege in their original petition, wherefore they pray leave to file this as an amendment and supplement thereto.

(Signed) L. PEIRCE.

Order.

Let this be filed.
N. Orl's, 21st Feb'ry, 1865.
(Signed) E. H. DURELL, *Judge.*

Order, cause fixed for trial, Ap'l 3d, '65

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

On motion of R. Waples, U. S. att'y, ordered, that the cause be as signed for trial on Wednesday, 5th April, 1865, at 11 a. m., and that all parties interested be notified hereof.

Notice.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

To Levi Pierce, Esq.:
You are hereby notified that the above cause has been assigned for trial on Wednesday, 5th April, 1865, at 11 a. m.
By order of court.
New Orleans, April 4, 1865.

W. S. BENEDICT,
Dy Clerk.

Service.

Rec'd April 4th, 1865, and on the same day, month, and year, served a copy of the within notice on Levi Pierce esq., by leaving it at his office in the hands of J. W. Gurley, esq.
New Orleans, Ap'l 4, '65.
(Signed) M. EAGAN,
Dy U. S. Ml.

Hearing and decree of condemnation, April 5th, 1865.

57 UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } No. 7643.

This cause came up for trial, dist. att'y for libellants, and the monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons duly entered, and the law and the evidence duly considered, it is, on motion of the district attorney, ordered, sentenced, and decreed by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the six lots of ground with the buildings thereon, the property of Thomas J. Semmes, fully described in the libel on file, be, and they are hereby, condemned as forfeited to the United States. It is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, and that upon the return thereof, the proceeds be distributed according to law, the legal rights of the intervenors being reserved in the premises.

Judgment rendered 5th Ap'l, 1865.
Judgment signed 10th Ap'l, 1865.
(Signed) E. H. DURELL, *Judge.*

Order revoking taxation of U. S. att'y's fee.—Extract from the minutes, Ap'l 7, '65.

Ordered, that all entries on the minutes of 28th, 29th, and 30th June, 1864, taxing the fees of the dist. att'y in confiscation cases, be cancelled and annulled, the same having been improvidently granted.

58 *Venditioni exponas.—Issued 11th April, 1865.*

United States district court, eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas at a district court of the United States holden at New Orleans for and within said district on the fifth day of April, A. D. 1865, six lots of ground with all the buildings and improvements thereon, the property of Thomas J. Semmes, fully described in the libel on file, were after proclamation and due proceedings decreed forfeited and ordered to be sold at public auction: these are therefore to command you to sell to the highest bidder at public auction, at the Merchants' Exchange, No. 18 Royal street within said district, on the 18th day of May, 1865, at 12 o'clock m., the said 6 lots of ground, &c., first giving ten days notice at least of the time and place of sale, by advertising the same in the True Delta, one of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale; the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs. And make due return hereof with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans, this 11th day of April, A. D. 1865, and 89 year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT, *D'y Clerk.*

59 *Marshal's return.—June* 17, '65.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

NEW ORLEANS, *June* 15, '65.

Pursuant to this precept I have caused the property within named to be offered for sale at public auction, on the day, hour, and place therein directed, having given 30 days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers were as under, but there not being at this offering two-thirds of the appraised value of said property, I withdrew it from sale, and again advertised the said property for sale in the True Delta, a daily paper printed in New Orleans, 10 days, as per order of the hon. dist. court, E. D. of L'a, in which advertisement the day, place, and hour of sale as well as the terms thereof were fully set forth as per the above-named order, as also by the crier at the time and place of sale, when, after having fulfilled all the previous legal requisites, I offered the above-named property for sale to the highest bidder at the above-named place and hour, on Tuesday, the 13th day of June, 1865, and at that sale the purchaser was E. W. Burbank. Five certain lots with the improvements therein described, as in the printed slip annexed to the certificate of mortgages hereto appended, for—

One note at 1 year from day of sale for	$5,250
And cash at adjudication	$5,250
Total amount of sale	$10,500

60 The lot of ground situate in the square bounded by Edwards, Estelle, Camp, and Magazine streets, measuring 27 feet 10 inches 5 lines front on Edward street, by a depth of 31 feet 11 inches 5 lines between parallel lines, and which had been condemned, was by an order of court restored to a certain claimant and was not offered for sale in obedience to said order. Whereby the gross sales amounted to ten thousand five hundred dollars cts., which I pay over to C. Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: A. BAUDOUIN,
D'y Marshal.

Received from Cuthbert Bullitt, U. S. marshal, ten thousand five hundred dollars c'ts, being (as he saith) the proceeds of the aforegoing sale, the monies to be disposed of as the court directs, and for which I have signed duplicate receipts.

(Signed) K. LOEW,
D'y Clerk.

NEW ORLEANS, *June 16th*, 1865.

Mortgage certificate annexed to marshal's return.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, certifies that in the records of his office there are no other mortgages standing in the name of Thomas J. Semmes and recorded against the property described in the printed slip hereunto annexed, than the following, to wit:

1. B. 72, f. 47. The one resulting from the inscription of a
61 building contract, by act before I. W. Breedlove, notary, the 3d Aug., 1858, entered into by said Semmes and Jamison and McIntosh, builders, by which said Semmes bound himself to pay unto said builders the sum of $1,500, they binding themselves to erect a dwelling, &c., on the portion of ground having 60 feet on Annunciation st., by 155 feet 8 inches on Edward st.

2° B. 74, fo. 658. The one he granted on a portion of ground forming the whole of lot 16 and 17, and part of Nos. 18 and 14 and 15, firstly, secondly, and thirdly, described in favor of the Merchants' Mutual Insurance Company, to secure payment of $6,000 and interest, as per act before said Breedlove, notary, the 5th March, 1860.

3° B. P., 1 for., 370, the privilege in favor of the 2d draining district.

New Orleans, May 11th, 1865.

(Signed) J. W. MADDEN, *Recorder.*

The property mentioned in the foregoing certificate and recited in the printed slip annexed is the same property described in the libel, with the exception of the lot in sq. between Edward, Estelle, Camp, and Magazine released to J. Bloom.

Order, cause fixed on intervention, April 25, '65.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

On motion of J. W. Gurley, of counsel for the Merchants' Mutual Ins. Co., intervenors in above case, ordered that their said intervention be assigned for hearing for Friday, 28th ins't, at 11 a. m.

UNITED STATES
ads.
MERCH'TS' MUTUAL INS'CE CO., INTERVENOR } No. 7643.
in six lots of ground, property of T. J. Semmes.

62 To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney of the United States of America for the said eastern district of Louisiana, who prosecutes herein for the United States in this behalf, to said amended and supplemental bill of intervention exhibited by the Merchants' Mutual Ins. Company in this cause.

This defendant, Rufus Waples, attorney for the United States for said district, reserving to said United States all rights of exception to said amended and supplemental bill of intervention of said Merch'ts' Mutual Insurance Company, for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith: That this defendant, attorney as aforesaid, in behalf as aforesaid, expressly denies that the said intervenors, the persons composing the firm and company of said M. M. Ins. Co., are loyal citizens of the United States. Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States, approved March 3, 1863, and entitled "An

act to protect the liens and vessels in certain cases, and for other purposes," "that inall cases now or hereafter pending wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts as above mentioned, or any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding
63 such condemnation, and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such ship, vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign State or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property, under the laws of the United States or of any loyal State thereof: Provided, That no such claim shall be allowed in any case when the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property: And provided also, That this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property, in any loyal State wherein such claim arose," the said intervenor, the Merchants' Mutual Ins. Company, is not entitled to any relief in this honorable court against the said property seized under said libel; and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause.

And the defendant attorney as aforesaid in behalf as aforesaid denies that said Thomas J. Semmes is indebted to said Merch'ts' Mutual Ins'ce Company in the manner and form and amount as stated in said bill of intervention, without this, that there is any other matter, cause,
64 or thing on the said intervenor's amended and supplemental bill contained, material or necessary for this def't attorney as aforesaid to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, attorney as aforesaid, all of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays that this honorable court will decree that said intervenor's bill be dismissed with costs and charges in this behalf wrongfully sustained. And as duty bound will ever pray, &c.

(Signed) RUFUS WAPLES,
U. S. Dis't Att'y for the E. D. of La.

Ruling of court on intervention.—Extract from the minutes, April 28, 1865.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

The intervention filed by the Merch'ts' Mutual Ins. Co. in this case came up for trial—J. W. Gurley, for intervenors; R. Waples, U. S. attorney—when it is ordered that all further action upon their claim be stayed until said company shall appear in court through loyal agents.

Petition of Isaac Bloom, praying restitution of one lot.—Filed May 2d, 1865.

U. S. dist. court, east'n district of La.

UNITED STATES
vs.
SIX LOTS OF GROUND. } No. 7643.

65 To the honorable E. H. Durell, judge of the U. S. district court, east'n dist. of La.:

The petition of Isaac Bloom, a loyal citizen of the United States residing in the city of New Orleans, respectfully represents that on the 1st October, 1858, your petitioner acquired by purchase from Thomas J. Semmes by act passed before J. Graham, notary, &c., among other property, a certain lot of ground or portion of ground in the 1st dist. of this city, in square bounded by Magazine, Edward, Estelle, and Camp streets, being the rear portion of a lot designated by the No. 1, on a plan drawn by A. D'Hemecourt, dated Nov. 9, 1847, and deposited in the office of the late notary, Jules Mossy, and measuring 27 feet 2 inches and 5 lines front on Edward street by a depth of 31 feet 11 inches and 5 lines between parallel lines English measure, as will fully appear together with other necessary particulars by reference to said act of sale, a duly certified copy of which is attached and made part of this petition; that said conveyance was duly registered in the conveyance office according to law on the 5 Oct., 1858, as will appear by reference to the certificate superscribed on said copy, and your petitioner has ever since held, owned, and enjoyed said property.

And your petitioner further alleges that said property has been proceeded against in the above-entitled case in confiscation for the use of the United States, &c., as the property of said Thomas J. Semmes; that in error of the rights and ownership of your petitioners and with the representation to and impression of the court that the same
66 belonged to said Thomas J. Semmes, the said property, among others, was, after due proceedings had, decreed to be confiscated to the use, &c., of the U. S.; that said decree is in error of the rights of your petitioner and is calculated to inflict irreparable injury upon him unless the court will be pleased to open said decree so far as said property and the rights of your petitioner are concerned, and to order the said property to be released from the operation of said decree and to be restored to him. That said property, by virtue of a writ of venditioni exponas, is advertised for sale by the U. S. marshal for the 18th May, 1865.

Wherefore your petitioner respectfully prays that Rufus Waples, esq., U. S. dist. att'y, may be cited to show cause, if any he has, why said decree shall not be opened by this honorable court, so far as said property and the rights of your petitioner in the premises are concerned; that after due proceedings had it may please this hon. court to open said decree of confiscation against said property and considering the same as in error quoad the same, may release said property from its operation and restore it to petitioner, as the legal owner thereof, and he prays for general relief, and he will ever pray, &c.

(Signed) I. BLOOM.

Sworn to and subscribed before me this 28th day of April, A. D. 1865.

(Signed) C. IZARD, 1 *J. P.*

(Signed) E. W. HUNTINGTON, ALFRED PHILIPS,
Proctors for Pet'r.

[5-c't stamp, rev.]

67 Submitted by consent.

C. ROSELIUS and
ALF. PHILIPS.
RUFUS WAPLES,
U. S. Att'y

Act of sale, filed with petition of I. Bloom May 2d, 1865.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this 1st day of October, in the year of our Lord 1858, and of the Independence of the United States of America the 83d, before me, James Graham, a notary public in and for the parish and city of New Orleans, State of L'a, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas J. Semmes, of this city, who declared that for the consideration hereinafter set forth he does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with all legal warranties, unto Isaac Bloom, also of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following-described property, to wit:

1st. A certain lot of ground situate in the 1st district of this city, in the square bounded by Edward, Magazine, Estelle, and Camp streets, designated by the No. 3, and which is a subdivision of the lot No. 4 according to a plan drawn by Bourgeral, annexed to an act of sale of the 13th May, 1834, passed before the late notary, M. Y. Lewis, and to which plan reference is hereby made; said lot measures 28 feet
68 4 inches front on Edward street, and is 127 feet 10 in. 5 lines deep between parallel lines, American measure.

2°. And a certain lot of ground or portion of ground in the district and square above mentioned, being the rear portion of a lot designated by the No. 1 on a plan drawn by A. D'Hemecourt, dated Nov'r 9th, 1847, deposited in the office of the late notary, Jules Mossey, and measuring 27 feet 2 inches and 5 lines front on Edward street by a depth of 31 feet 11 inches and 5 lines between parallel lines, English measure.

Said property being so conveyed, together with the buildings and improvements thereon and the rights, privileges, ways and appurtenances thereunto belonging or in any wise appertaining, and it was acquired by said vendor by purchaser, that herein firstly described from Robert W. Estlin by an act passed before Richard Brenan, a notary in this city, on the 9th day of June, 1852, and that herein secondly described from Elias W. Digges by an act passed before T. O. Stark, a notary in this city, on the 9th day of June, 1852.

By reference to the annexed certificate of the recorder of mortgages in and for the city and parish, dated the 29th Sept'r, 1858, it will appear that the property herein conveyed is free from all mortgages or other encumbrances in the name of said vendor.

To have and to hold said the property and appurtenances unto the said purchaser, his heirs and assigns forever; and the said vendor hereby binds himself and his heirs forever to warrant and defend the prop-
69 erty and appurtenances herein conveyed against all legal claims and demands whatever. The said vendor moreover transfers unto the said purchaser all the rights and actions of warranty to which he himself is entitled against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions, to be by him enjoined and exercised in the same manner as they might have been by the said vendor himself.

or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) J. MORGAN HALL.

Sworn to and subscribed before me this 19th of February, 1864.

(Signed) K. LOEW,
D'y Clerk.

[Seal and 5-c'ts stamp.]

United States district court, eastern dist. of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original record in this office.

Clerk's office, May 23d, 1865.

(Signed) W. S. BENEDICT,
D'y Clerk.

Filed May 23d, 1865.

(Signed) W. S. BENEDICT,
D'y Clerk.

No. 351.

I do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of
74 the United States and the Union of the States thereunder, and that I will, in like manner, abide by and faithfully support all acts of Congress, passed during the existing rebellion, with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will, in like manner, abide by, and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the upreme Court: So help me God.

(Signed) J. VIOSCA, JR.

Sworn to and subscribed before me this 20th of May, 1865.

(Signed) F. B. VINOT,
D'y Clerk, U. S. Circuit Court, 6th Circuit, E. D. of La.

[Seal and 5-c'ts stamp.]

CLERK'S OFFICE.

A true copy of the original of record in this office. New Orleans, May 23d, 1865.

(Signed) F. B. VINOT,
D'y Clerk.

(Endorsed:) Oath of amnesty of J. Viosca, jr., filed with intervention of Merch'ts' Mutual Ins. Co. Filed May 25, 1865. (Signed) W. S. Benedict, d'y clerk.

No. 322.

I do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder, and that I will,

in like manner, abide by and faithfully support all acts of Congress,
75 passed during the existing rebellion, with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President, made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) J. J. FERNANDEZ

Sworn to and subscribed before me this 18th of May, 1865.

(Signed) F. B. VINOT.
D'y Clerk.

CLERK'S OFFICE.

A true copy of the original of record in this office.
New Orleans, May 23d, 1865.

(Signed) F. B. VINOT,
D'y Clerk.

[Seal and 5 c'ts stamp.]

(Endorsed:) Oath of amnesty of J. J. Fernandez, filed with intervention of Merch'ts' Mutual Ins'ce Co. Filed May 25th, 1865. (Signed) W. S. Benedict, d'y clerk.

No. 276.

I do solemnly swear in presence of Almighty God, that I will henceforth faithfully support, protect and defend the Constitution of the United States and the Union of the States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified or held void by Congress, or by decision of the Supreme Court; and that I will, in like manner, abide by and
76 faithfully support all proclamations of the President made during the existing rebellion having reference to slaves so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) L. F. GÉNÉRÉS.

Sworn to and subscribed before me this 10th of May, 1865.

(Signed) F. B. VINOT,
D'y Clerk.

[Seal and 5 ct's stamp.]

CLERK'S OFFICE.

A true copy of the original of record in this office.
New Orleans, May 23d, 1865.

(Signed) F. B. VINOT,
D'y Clerk.

(Endorsed:) Oath of amnesty of L. F. Générés, filed with intervention of Merch'ts' Mutual Ins. Co. Filed May 25, 1865. (Signed) W. S. Benedict, d'y clerk.

No. 198.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect and defend the Constitution of the United

States and the Union of the States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed by Congress or by decision of the Supreme Court; and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) CH'S SAGORY.

77 Sworn to and subscribed before me this 1st day of March, 1865.

(Signed) F. B. VINOT,
D'y Clerk.

[Seal and 5 cts. stamp.]

United States circuit court, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

New Orleans, March 13th, 1865.

(Signed) F. B. VINOT,
D'y Clerk.

(Endorsed:) Amnesty oath of Ch's Sagory, on intervention of Merchants' Mutual Ins. Co. Filed March 14, '65. (Signed) K. Loew, d'y clerk.

No. 200.

I do solemnly swear in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) S. Z. RELF.

Sworn to and subscribed before me this 1st of March, 1865.

(Signed) F. B. VINOT,
D'y Clerk.

[Seal and 5 cts stamp.]

78 United States circuit court, sixth circuit and eastern district of La.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

New Orleans, March 13, '65.

(Signed) F. B. VINOT,
D'y Clerk.

(Endorsed:) Amnesty oath of S. Z. Relf on intervention of the Merchants' Mutual Ins. Co. Filed March 14, '65. (Signed) K. Loew, d'y clerk.

No. 197.

I do solemnly swear in the presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court, and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) P. MASPERO.

Sworn to and subscribed before me this 1st of March, 1865.

(Signed) F. B. VINOT,
Dy Clerk.

[Seal and 5 cts. stamp.]

United States circuit court, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

New Orleans, March 13, '65.

79 (Signed) F. B. VINOT,
Dy Clerk.

(Endorsed:) Amnesty oath of P. Maspero on intervention of Merchants' Mutual Ins. Co. Filed March 14, '65. (Signed) K. Loew, d'y clerk.

No. 199.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect and defend the Constitution of the United States and the Union of States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court, and that I will, in like manner, abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) D. McCOARD.

Sworn to and subscribed before me this 1st of March, 1865.

(Signed) F. B. VINOT.
Dy Clerk.

[Seal and 5cts. stamp.]

United States circuit court, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

(Signed) F. B. VINOT,
Dy Clerk.

(Endorsed:) Amnesty oath of D. McCoard on intervention of Merchants' Mutual Insurance Company. Filed March 14, 1865. (Signed) K. Loew, d'y clerk.

80 *Judgment favor Merchants' Mutual Insurance Co., May 29, 1865.*

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF THOS. J. Semmes. } 7643.

This cause came up for trial in the intervention of the Merchants' Mutual Insurance Company (Levi Pierce for intervenors, dis't attorney for libellants), when, after hearing the pleadings and evidence, the court being satisfied that the intervenors have fully proven their claim, it is ordered, adjudged and decreed that said Merchants' Mutual Insurance Company have judgment in their favor for the sum of four thousand five hundred dollars with 8% interest thereon from 5th March, 1862, till paid, with privilege and mortgage upon the proceeds of a certain portion of ground situate in the 1st district, in the square bounded by Annunciation, St. Thomas, Edwards and Benjamin streets, forming the whole of lots Nos. 16 and 17, and parts of 13–14 and 15, and fully described in notarial act on file and made part hereof. It is further ordered that said intervenors (pay) contribute their share in the costs and charges herein.

Judgment rendered May 29, 1865.
Judgment signed June 5, 1865.
(Signed) E. H. DURELL, *Judge.*

Consent to open decree of condemnation.—Filed 29 May, 1865.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF THOS J. Semmes. } Filed. No. 7643.

81 It is agreed that for the purpose of saving delay and expenses the decree of confiscation herein entered be opened for the purpose of submitting the claim of Isaac Bloom, and the said claim be submitted on the evidence on file.

(Signed) C. ROSELIUS,
Proctor for Claimant.
R. WAPLES,
U. S. Att'y.

Order to open decree and submission.—Extract from minutes of 29 May, '65.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THO'S J. Semmes. } 7643.

By written consent of counsel, the decree of condemnation, pronounced on 5th April, 1865, is reopened for the purpose of submitting to the court the claim of Isaac Bloom to a portion of the libelled property, and said claim is now submitted upon the evidence on file.

Judgment favor Isaac Bloom, May 31st, 1865.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THOMAS J. Semmes. } 7643.

The law and the evidence considered, it is ordered, adjudged, and decreed that the intervenor, Isaac Bloom, be recognized as the rightful and bona fide owner of a lot or portion of ground, with the improvements thereon, situate in the 1st district of this city, in the square bounded by Edward, Magazine, Estelle, and Camp streets, being the rear portion of a lot designated by the No. 1 on a plan by A. D'Hemecourt, of 9th November, 1847, in the office of Jules Mossey, late notary, measuring 27 feet 2 inches 5 lines front on Edward street, by a depth of 31 feet 82 11 inches 5 lines between parallel lines. It is further ordered that the libel, so far as it affects the foregoing lot, be dismissed, and that the intervenor pay costs on his interventions.

Judgment rendered 31st May, 1865.

Judgment signed 10th June, 1865.

(Signed) E. H. DURELL, *Judge.*

Taxation of costs, June 29, '65.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THO'S J. Semmes. } 7643.

Ordered, that the costs and charges in this case be taxed, allowed, and paid as follows, to wit:

District att'y 2%	210 00
Clerk	119 15
A. Shaw, as clerk	28 75
U. S. comm'r	20 00
C. Bullitt, marshal	523 49
J. Graham, ex-marshal	68 64
Appraisers Heath and Hill	105 00
Registrar, 1%	105 00
	1,180 03

Decree of distribution.—Entered 29th June, 1865.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } 7643.

The U. S. marshal having returned into court the writ of venditioni exponas, showing that the libelled property, upon which bears a mortgage amounting on the day of sale in capital and interest to $5,651.50, was sold to E. W. Burbank for $10,500.00, of which half cash and half at one year, and it appearing that the following taxes are due upon the property, to wit:

83	U. S. direct tax	29 70	
	State tax, 1861	55 45	
	Do. '62	58 95	
	Do. '63	53 50	
	Do. '64	53 50	
	City tax, int. and com., '61	369 00	
	" " " '62	227 40	
	" " " '63	208 60	
	" " " '64	270 00	
	Clerk 6th court, No. 15206	3 25	
	Sheriff, " "	16 19	
	Clerk 2d, No. 23462	3 25	
	Sheriff, " "	4 77	
	Clerk 3d, " 18760	3 25	
	Sheriff, " "	4 50	
			1,361 40
	And that costs taxed amount to		1,180 00
	And it appearing further that the proportion chargeable to the mor'gage creditor, the Merchants' Mut. Ins. Co., in the taxes is		$723 25
	And their proportion in costs		$629 40
	It is ordered, adjudged, and decreed, that after deducting the whole of the taxes and charges, there be now paid to said Merch'ts' Mutual Insurance Co. the sum of		$2,708 57
	which is the balance of the cash on hand.		
	The said Co. being entitled to receive the further sum of		$1,590 28
	out of the proceeds of the note at one year for $5,250 when paid.		
	Leaving a balance of		$3,659 72
	Accruing to the U. S. from the same source		$10,500 00

84 *Motion to amend and correct decree of distribution.—Filed 22d July*, 1865.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

L. Pierce, esq., proctor for the Merchants' Mutual Ins. Comp'y, intervenors, this day submitted to the court the following motion, viz: On motion of L. Pierce, esq., attorney for intervenors, and on showing to the court that there is error in the distribution of the proceeds of the sale of the property libelled herein in this: That the portion of the property on which the mortgage of intervenors rests was appraised at $20,000 and the two remaining lots at $1,500. That the said property was sold in block and brought the *same* of $10,500, half cash and balance on credit of one year; that the proper of distribution would be said appraisement; that upon said basis the portion of property on which said mortgage rested brought $9,767, a sum more than sufficient to pay intervenors' judgment of $5,651.50, with all taxes and charges, and that in the distribution made they are allowed only the sum of $4,298.88.

It is ordered in the presence of the dist. att'y that the same be corrected, and that intervenors be paid the full amount of said judgment and costs.

Whereupon the court ordered that the matter be referred to Ch's Claiborne, esq., U. S. comm'r, for investigation, and that he report thereon without delay.

Report of U. S. comm'r.—Filed 24th Ju'y, '65.

85 UNITED STATES
vs.
PROPERTY OF THO. J. SEMMES. } 7643.

On motion of Merchants' Ins'ce Co. to amend judgment of distribution, the undersigned, having been appointed referee to report on the above motion, begs leave to state that after a thorough examination he finds that the motion sets out the facts correctly. There is a surplus of proceeds over and above the claim, taxes, and costs. The only question, w'ether in a confiscated case an intervenor can come in and receive the full amount of his claim without contributing to taxes and costs, and thereby throw the whole burden upon the U. S.

Respectfully submitted.

(Signed) CH'S CLAIBORNE,
U. S. Com'r.

To the Hon. E. H. DURELL,
Judge U. S. D. C't.

Order of court amending decree of distribution. Extract from minutes.—Filed July 24th, 1865.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } 7643.

Considering the report of the U. S. comm'r, it is ordered that the motion made by the Merchants' Mutual Insurance Company on the 22d instant be granted; that said company be released from the payment of all costs and taxes, and that the judgment of distribution of the 29th be amended by increasing the amount on time allowed to said company from $1,590.28 to $2,942.93, and by reducing the balance accruing to the U. S. from $3,659.72 to $2,307.07.

86 *Intervention of M'r's Matilda Semmes.—Filed 1st August, 1865.*

THE UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF Thomas J. Semmes. } No. 7643.

To the honorable the judge of the dist. court of the United States in and for the eastern district of Louisiana:

The petition of M'r's Matilda Semmes respectfully shows—

1st. That she is a loyal citizen of the United States residing at Washington City.

2d. That a bill of information has been filed in this honorable court by Rufus Waples, esq., dist. att'y of the United States, in a suit entitled The United States vs. 6 Lots of Ground, the property of Thomas J. Semmes, No. 7643 on the docket of suits in this hon. court, a full description of which is contained in said bill of information, praying for a decree of confiscation of the same in favor of the United States, for certain causes and reasons in said libel of information set forth, all of which will more fully appear by reference to said bill of information and the proceedings had therein.

3d. That she is a creditor of said Thomas J. Semmes in the sum of three thousand seven hundred and fifty dollars, with interest at the rate of 6 % per annum from the 1st day of November, 1859, till 1st November, 1861, and 8 % thereafter, subject to a credit of $609.67 on the 4th November, 1861, for this, to wit: That petitioner is holder and owner for a bona fide consideration of a promissory note dated Novem-
87 ber 1st, 1859, payable by said Semmes (Tho's J.) to his own order, and by him endorsed, for ($3,750) three thousand seven hundred and fifty dollars, with interest at 6 % from date till maturity and 8 % thereafter, payable 2 years after date, subject to the credit aforesaid, which said note is hereto annexed and made a part hereof.

4th. That said note was given by said Semmes as part of the consideration of a building contract with Jamison and McIntosh, builders and architects, in this city, for the construction of the buildings and improvements now on the property libelled herein, which contract was passed before James W. Breedlove, notary public, on the 3d August, 1858, and was duly recorded in the office of the recorder of mortgages in this city, on the 6th day of August, 1858. That the property covered by said contract, and subject to a special lien and privilege in her favor, has been sold as forfeited to the Government of the U. S., and subject to confiscation, and that the proceeds of the sale are still under the control of this hon'ble court.

5th. Petitioner shows that by reason of the premises she has a lien and special privilege upon the property libelled herein, which could not be impaired by any act done, or omitted to be, by said Thomas J. Semmes, and that the rights of this intervenor in and upon said prop- cannot be affected thereby.

Wherefore petitioner prays leave to file this her petition of interven-
tion and interpleader, and that the same may be notified to Ru-
88 fus Waples, esq., district attorney of the U. S., or any other party in interest, and after due proceedings had, a decree may be rendered in her favor, recognizing her right to be paid by privilege and preference, out of the proceeds of the property libelled herein, before the payment of any other claims or demands on the part of the United States or of any person or persons whatever.

And petitioner prays for all such other and further aid, relief, and remedy as the nature of the case may require and the law will permit and she will ever pray.

(Signed) J. M. LEA,
Proctor for Petitioner.

P. Warfield Semmes, being duly sworn, deposes and says that he is the agent of Mrs. Matilda Semmes, the intervenor in these proceedings. That he is duly authorized to make this claim and *and* petition of intervention. That all the allegations contained in this petition of intervention are true. That no one else has any interest in the claim and demand therein set forth but said Matilda Semmes, and that she is the sole owner thereof, and that said Matilda Semmes resides out of the State of Louisiana, and is now absent from the State.

(Signed) P. WARFIELD SEMMES,

Sworn to and subscribed before me this 1st of August, 1865.

(Signed) K. LOEW,
Dy Clerk.

Order.

Let the petitioner be authorized to intervene in this suit.
August 1, 1865.
(Signed) E. H. DURELL,
Judge.

89 *Promissory note.—Filed with intervention of Mrs. M. Semmes.*

$3.750.00.] NEW ORLEANS, *November* 1, '59.

Two years after date I promise to pay, to the order of myself, thirty-seven hundred and fifty dollars, value received, with interest at the rate of 6 % per annum from date until maturity, and if not then paid, 8 % until final payment.
(Signed) TH'S J. SEMMES.

(On the margin:) Ne varietur. In conformity with building contract passed before me on the 3d day of August, 1858. New Orleans, December 1st, 1859. Signed J. W. Breedlove, not. pub.

(Endorsed:) Pay Mrs. Matilda Semmes. (Signed) Th's J. Semmes.

Nov'r 4th, 1861.—Credit on this note paid this day $609.17; the balance is due my mother.
(Signed) T. J. SEMMES.

Building contract.—Filed with intervention of Mrs. Matilda Semmes.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this day before me, James Wood Breedlove, a notary public in and for the parish of Orleans, city of New Orleans, and State of Louisiana aforesaid, duly commissioned and qualified, personally came and appeared Samuel Jamison, one of the members of the firm of Jamison & McIntosh, of this city, builders, party hereto of the first part, and with part also came and appeared Thomas J. Semmes, also of this city, party hereto of the other part; which said appearers declared that they had contracted and agreed, and by these
90 presents mutually contract, agree, and bind themselves the one party to the other, as follows, to wit:

The said Jamison and McIntosh hereby agree and bind themselves to provide all the necessary materials, and to erect or cause to be erected and completely finish a two story and attic brick (building) dwelling-house on the property of the said Thomas J. Semmes, situate in the 1st district of this city, composed of lots 16 and 17, half of lot 18, and half of lots 14 and 15, on a plan drawn by B. F. Nichols, architect, on the 31st May, 1853, and deposited as plan No. 203, in the office of T. A. Starke, notary, in this city, the whole forming the corner of Annunciation and Edward st's, and measuring 60 feet on Annunciation street by one hundred and fifty-five feet 8 inches in depth, in strict accordance with the plans and designs made by W. A. Freret, architect, and in conformity with the specifications hereto annexed and made part of this contract, which said plans, designs, and specifications have been duly signed by the said parties and countersigned by me, said notary. The said parties of the first part hereby bind and obligate themselves to remove, free of expense to the said party of the second part, the shanties now on said lots, and when the house is completed, to remove all the

rubbish resulting from the building thereon. The house is to be at the risk of the builders until completed and delivered up to the owner for occupation in pursuance of this contract, so that if destroyed
91 before completion and possession thereof given to the owner, the entire loss is to fall upon the builders and the house is to be rebuilt by them and delivered to said Thomas J. Semmes within one year from its destruction.

The said party of the first part are to commence the building in the month of October, 1858, and proceed to construct it in pursuance of the said plans, drawings, and specifications, in the manner therein specified and described, on or before the 1st day of October, 1859, and on or before that day to deliver up the house complete for occupation to the said party of the second part. Nothing is to be charged as extra, unless the work claimed as extra and the price thereof are agreed to in writing by the said contracting parties. In consideration of all which, the said Thomas J. Semmes hereby binds himself and his heirs, to pay unto the said Jamison and McIntosh the sum of fifteen thousand dollars, in the manner following, to wit: $2,000 when the entire foundations are laid; $2,000 in month of March, 1859; $2,000 in month of August, 1859; $1,500 on the 1st of October, 1859. And in full payment of the balance, the said Thomas J. Semmes hereby binds himself to furnish his two several promissory notes for the sum of $3,750 each, to his order and by himself, endorsed dated on the 1st day of October, 1859, or on the day when said buildings are completely finished and the keys delivered up, and made payable 1 and 2 years after date, with 6% interest from date.

92 Thus done and passed in my office, in the city of New Orleans, in the presence of James S. Moody and Albert B. Breedlove, competent witnesses who hereunto sign their names, together with said parties and me, notary, on the 3d day of August, 1858.

(Original signed) THOS. J. SEMMES.
JAMISON & McINTOSH.
JAMES S. MOODY.
J. WOOD BREEDLOVE,
Notary Public.

I, Ernest Eude, a notary public, duly commissioned and qualified in and for the parish of Orleans, residing in the city of New Orleans, do hereby certify the foregoing to be a true copy of the original act on file in the records of James Wood Breedlove, late a notary public in this city, which are in my possession as custodian thereof.

New Orleans, July 28th, A. D. 1865.

(Signed) E. EUDE,
Notary Public, General Custodian of all Notarial Records of Persons out of Office.

(Seal and stamps.)

Mortgage certificate.

I, the undersigned, recorder of mortgages for the parish and city of New Orleans, certify that the within contract has been duly recorded in my office in B. 72, fo. 47, under date of the sixth August, 1858.

New Orleans, July 31st, 1865.

(Signed) CH'S E. LEUES, *Dy Rec.*

Order, cause fixed, Jan'y 16, '66.

U. S.
vs.
6 LOTS OF GROUND, THE PROPERTY OF T. J. SEMMES. } 7643.

On motion of John K. Goodloe, U. S. att'y, ordered, that this cause on the intervention be assigned for trial on Monday, 5th Feb'y, 1866, at 11 a. m., and that the party interested be notified thereof.

93 *Notice.*

U. S.
vs.
PROPERTY OF TH'S J. SEMMES. } 7643.

To J. N. Lea, esq.:

You are hereby notified that the above cause has been assigned for trial on Monday, 5' Feb'y, 1866, at 11 a. m., by order of court.

New Orleans, Jan'y 16, '66.

H. K. LOEW,
D'y Clerk.

Service.

Rec'd January 17, '66, and on the 20th of same month and year served a copy of the within notice on J. N. Lea, esq., personally.

N. O., Jan'y 22, '66.

(Signed) M. EAGAN,
D'y U. S. M'l.

Hearing and judgment favor Matilda Semmes, Feb'y 5, '66.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THOMAS J. SEMMES. } 7643.

This cause came up for trial on the intervention of Mrs. Matilda Semmes (district attorney for libellants, J. N. Lea for intervenor), when after hearing the pleadings and evidence, it is ordered, adjudged, and decreed that there be judgment in favor of said Mrs. Matilda Semmes for the sum of three thousand seven hundred and fifty dollars, with 6% interest from 1st November, 1859, to 1st November, 1861, and 8% thereafter till paid, subject to a credit of $609.17 paid 4th November, 1861, with a lien and privilege on the balance of the proceeds arising from the sale of the defendant's property. It is further ordered and decreed that the judgment of distribution of 29th June, 1865, as well as the order
94 modifying the same under date July 24, 1865, in so far as it is therein decreed that the balance of $2,307.07 be paid into the Treasury of the United States, be amended, and that the said balance less $18 costs created by intervenor be paid over to said Mrs. Matilda Semmes in part satisfaction of her claim against defendant as soon as the note for $5,250 shall have been paid.

Judgment rendered Feb'y 5, '66.

Judgment signed Feb'y 9, '66.

(Signed) E. H. DURELL, *Judge.*

Note of evidence, Feb'y 5, '66.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

Mrs. Matilda Semmes offered in the evidence the record and proceedings herein, also note and building contract on file A and B, copied at p. 98 and 104.) See pages 128 and 129, for copies of note and building contract, of this transcript.)

Rule by Th's J. Semmes to set aside default and to file his claim.—Extract from the minutes, March 4th, 1868.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } 7463.

On motion of Sullivan, Billings & Hughes, proctors, for Th's J. Semmes, and upon suggesting to the court that there was a decree of condemnation pronounced herein on the 5th day of April, 1865, which decree was on the 31st day of May, 1865, reopened and that a portion of the property libelled herein has never been condemned by any subsequent decree, to which property said Thomas J. Semmes is desirous of filing
95 a claim, it is ordered that Samuel H. Torrey, esq., district att'y, show cause on the 14th day of March, 1868, at 11 a. m. why thh default against said Tho's J. Semmes should not be set aside and he have leave to file his claim and answer herein.

Hearing of rule, March 14th, 1868.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

The rule taken by the defendant on 4th instant was called up for trial—Sullivan, Billings and Hughes and C. M. Conrad for pl'ff in rule; U. S. attorney Torrey for def't in rule—when, upon a hearing of the rule, it appearing that E. W. Burbank was purchaser of all the property libelled herein except that claimed by Isaac Bloom, it is ordered that the further hearing of the rule be continued until the 26th day of March, 1868, at 11 a. m., and that the said E. W. Burbank be served with a copy of the rule and of this order, and made party to these proceedings, and that he have 10 days' notice of this adjourned hearing.

Service.

Rec'd March 16th, 1868, by the U. S. marshal, and on the same day served copy of within rule and order on Sam'l H. Torrey, U. S. dist. att'y, named herein, personally at his office in the custom-house of this city.
N. O., March 17, '68.

A. FIELD,
D'y U. S. Ml.

Continuance.—Extract from minutes.—March 26th, 1868.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } 7643.

96 On motion of Sullivan, Billings and Hughes it is ordered that the rule herein taken on the 4th instant which on 14th inst. was ordered to be fixed for trial on 26th March, '68, and served on E. W. Burbank, the purchaser of the property, be continued and adjourned to Saturday, 11 April, 1868, at 11 a. m., and that a copy of this order be served on said Burbank, together with copy of the original rule and the order of 14th March, 1868.

On 27th day of March, 1868, the marshal served copy of rule of 4th March of the order of 14th March and of 26th March, 1868, on E. W. Burbank, as appears from the following return endorsed on the paper:

Return of service of rules.

Received March 27th, 1868, by the U. S. marshal and on same day of March, '68, served copy of the within rule on E. W. Burbank, named herein, personally, at office 71 Tchoupitoulas street, in this city.
N. O., March 27, '68.
(Signed) S. W. REED,
D'y U. S. M'l.

Peremptory exception of E. W. Burbank.—Filed April 11th, 1868.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } 7643.

District court of the U. S. for the dist. of Louisiana.

And error to the rule, taken in this case on the 12th March, 1868, and to the order of this court of the 14th March, 1868, making E. W. Burbank a party to said rule and proceedings, comes said E. W. Burbank, by the undersigned, his counsel, and to the said rule and proceedings files this his peremptory exception, to wit:

97 That the rights of respondent as purchaser of the property libelled and condemned and sold in the above entitled and numbered cause, as shown by the judgment of condemnation of the 5th of April, 1865, and the writ of venditioni exponas of 11th April, 1865, and the marshal's deed of 15th June, 1865, herewith made part of this exception, cannot be questioned in the form herein, by said rules and proceedings attempted.

Wherefore, reserving his right to answer over to the said rule and proceedings in case this his exception should be overruled, respondent prays that said rule and proceedings be dismissed so far as in any manner affecting the rights of respondent to said property.

(Signed) FELLOWS AND MILLS, *Attys.*

Exception of the U. S. att'y.—Filed April 11th, 1868.

U. S.
vs.
THE PROPERTY OF T. J. SEMMES. } 7643.

The exception of the United States, libellants, herein to the rule of Tho's J. Semmes, shows that said Semmes is not and has not been a party to the proceedings and cannot be heard; that the time of the monition has long ago expired, and the proceedings closed.

(Signed) SAM. H. TORREY,
U. S. Att'y.

Minute of evidence on trial of rule.—Filed April 16, '68.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THO'S J. SEMMES. } 7643.

E. W. Burbank offered in evidence the marshal's deed, the judgment of condemnation, the writ of venditioni exponas. He has filed
98 a peremptory exception; U. S. att'y files exception also.

Marshal's deed offered by Burbank April 11, 1868.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Whereas I, Cuthbert Bullitt, marshal of the U. S. for the eastern district of Louisiana, under and by virtue of a writ of venditioni exponas to me directed by the honorable the dist. court of the U. S. for the district aforesaid, in the said entitled United States vs. Six Lots of Ground, the property of Thos. J. Semmes, No. 7643 of the *court* of said court, did expose at public sale, according to law and after all the (legal) previous legal requisites had been fulfilled and complied with, and after having given full 30 days' notice of said sale in the True Delta, one of the daily newspapers printed and published in the city of New Orleans, viz, on the 13th and 26th April, 9th, 18th, 13th May, and 13th June, 1865, the following described property, to wit: a certain lot of ground situate in the 1st district, in the square bounded by Annuciation, S't Thomas, Edward, and Benjamin streets, and designated by the No. 14 on a plan drawn by B. F. Nichols, architect, and measuring 22 f't 10 inches 3 lines front on Edward st. by 17 f't in width at the rear, 121 feet 7 inches and 3 lines in depth on division line of lot No. 13, and 120 feet 11 inches and 7 lines on the line dividing it from lot No 15.

A certain piece or portion of ground situate in the 1st district of said city in the sq. bounded by S't Thomas, Annunciation, Edward,
99 and Benjamin streets; said portion of ground measures 12 feet front on Annunciation street by 110 feet deep between parallel lines, which portion of ground makes part of lot No. 18, as per plan by B. F. Nichols, architect, and which portion of ground is bounded on one side by lot No. 17 on said plan, on the other side by the remaining portion of lot No. 18.

Three certain lots of ground situate in the 1st district, in square bounded by S't Thomas, Annunciation, Edward, and Benjamin streets,

designated as lots Nos. 15, 16, and 17, on a plan by B. F. Nichols, dated 31 May, 1853; No. 15 measures 22 feet 10 inches 3 lines front on Edward street, 17 feet in width in the rear, 120 feet 11 inches 7 lines on the line dividing it from lot No. 14; lots 16 and 17 measure each 24 feet front on Annunciation st. by 110 feet deep between parallel lines; lot No 16 forms the corner of Edward and Annunciation street'. On Tuesday, the 13th day of June, 1865, in the year 1865, at the hour of 12 o'clock meridian, at the Merchants and Auctioneers' Exchange, No. 18 Royal street, in this city, when, after due proclamation of said sale, and duly crying the said property and appurtenances, the same were adjudicated to Edward W. Burbank, he being the last and highest bidder thereon, for the price and sum of ten thousand five hundred dollars, at the time of adjudication, which said sum I hereby acknowledge to have received in

the following manner, viz: his promissory noted dated the 13th

100 June instant, for the sum of $5,250, payable one year from its date to the order of the clerk of the U. S. district court, to secure the payment of which note special mortgage is hereby retained on the property herein conveyed and above described, and the sum of $5,250 in ready current money of the United States of America. And it appears from a duly certified copy from the records in the office of the recorder of mortgages for the parish of Orleans, which certificate is annexed to the writ of venditioni exponas under the authority of which the above-described property has been sold, that there are none others than the following mortgages recorded against the above-described property, viz:

1. Book 72, fo. 47. The one resulting from the inscription of a building contract by and before J. W. Breedlove, notary, the 3d August, 1858, entered into by said Semmes and Jamison & McIntosh, builders, by which said Semmes bound himself to pay unto said builders the sum of $15,000, they binding themselves to erect a dwelling house, &c., on the portion of ground having 60 feet on Annunciation st. by 15[illegible] feet 8 inches on Edward st.

2. B. 74, fo. 658. The one he granted on a portion of ground forming the whole of lots Nos. 16 and 17 and parts of Nos. 18, 14, and 13 firstly, secondly, and thirdly described, in favor of the Merchants' Mutual Insurance Company, to secure payment of $6,000 and interest, as per act before said Breedlove, notary, the 3d March, 1860.

3. B. P. 1, fo. 370. The privilege in favor of the 2d draining district.

101 Now, therefore, know all men by these presents that I, the U. S. marshal aforesaid, in consideration of the premises and by virtue of the laws in such case made and provided and under the authority of the acts of Congress of 6th Aug., 1861, the 17th July, 1862, and 3d March, 1863, in relation to confiscations, do hereby sell, transfer, assign, and set over unto the said Edward W. Burbank, as aforesaid, his heirs, administrators, executors, and assigns, all and singular the above-described property, with all the buildings and improvements thereon, rights, ways, privileges, hereditaments, and appurtenances to the same belonging and in any wise appertaining.

To have and to hold the above-described property, with all the buildings and improvements thereon, rights, ways, &c., as aforesaid, unto the said Edward W. Burbank, his heirs and assigns as aforesaid, to his and their proper use, benefit, and behoof forever.

In testimony whereof I grant these presents, under, my signature as U. S. marshal aforesaid, in the city of New Orleans, on this 15th day of

Exception of the U. S. att'y.—Filed April 11th, 1868.

U. S.
vs. } 7643.
THE PROPERTY OF T. J. SEMMES.

The exception of the United States, libellants, herein to the rule of Tho's J. Semmes, shows that said Semmes is not and has not been a party to the proceedings and cannot be heard; that the time of the monition has long ago expired, and the proceedings closed.

(Signed) SAM. H. TORREY,
U. S. Att'y.

Minute of evidence on trial of rule.—Filed April 16, '68.

U. S.
vs. } 7643.
6 LOTS OF GROUND, PROPERTY OF THO'S J. SEMMES.

E. W. Burbank offered in evidence the marshal's deed, the judgment of condemnation, the writ of venditioni exponas. He has filed
98 a peremptory exception; U. S. att'y files exception also.

Marshal's deed offered by Burbank April 11, 1868.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Whereas I, Cuthbert Bullitt, marshal of the U. S. for the eastern district of Louisiana, under and by virtue of a writ of venditioni exponas to me directed by the honorable the dist. court of the U. S. for the district aforesaid, in the said entitled United States vs. Six Lots of Ground, the property of Thos. J. Semmes, No. 7643 of the *court* of said court, did expose at public sale, according to law and after all the (legal) previous legal requisites had been fulfilled and complied with, and after having given full 30 days' notice of said sale in the True Delta, one of the daily newspapers printed and published in the city of New Orleans, viz, on the 13th and 26th April, 9th, 18th, 13th May, and 13th June, 1865, the following described property, to wit: a certain lot of ground situate in the 1st district, in the square bounded by Annuciation, S't Thomas, Edward, and Benjamin streets, and designated by the No. 14 on a plan drawn by B. F. Nichols, architect, and measuring 22 f't 10 inches 3 lines front on Edward st. by 17 f't in width at the rear, 121 feet 7 inches and 3 lines in depth on division line of lot No. 13, and 120 feet 11 inches and 7 lines on the line dividing it from lot No 15.

A certain piece or portion of ground situate in the 1st district of said city in the sq. bounded by S't Thomas, Annunciation, Edward,
99 and Benjamin streets; said portion of ground measures 12 feet front on Annunciation street by 110 feet deep between parallel lines, which portion of ground makes part of lot No. 18, as per plan by B. F. Nichols, architect, and which portion of ground is bounded on one side by lot No. 17 on said plan, on the other side by the remaining portion of lot No. 18.

Three certain lots of ground situate in the 1st district, in square bounded by S't Thomas, Annunciation, Edward, and Benjamin streets,

designated as lots Nos. 15, 16, and 17, on a plan by B. F. Nichols, dated 31 May, 1853; No. 15 measures 22 feet 10 inches 3 lines front on Edward street, 17 feet in width in the rear, 120 feet 11 inches 7 lines on the line dividing it from lot No. 14; lots 16 and 17 measure each 24 feet front on Annunciation st. by 110 feet deep between parallel lines; lot No 16 forms the corner of Edward and Annunciation street'. On Tuesday, the 13th day of June, 1865, in the year 1865, at the hour of 12 o'clock meridian, at the Merchants and Auctioneers' Exchange, No. 18 Royal street, in this city, when, after due proclamation of said sale, and duly crying the said property and appurtenances, the same were adjudicated to Edward W. Burbank, he being the last and highest bidder thereon, for the price and sum of ten thousand five hundred dollars, at the time of adjudication, which said sum I hereby acknowledge to have received in the following manner, viz: his promissory noted dated the 13th
100 June instant, for the sum of $5,250, payable one year from its date to the order of the clerk of the U. S. district court, to secure the payment of which note special mortgage is hereby retained on the property herein conveyed and above described, and the sum of $5,250 in ready current money of the United States of America. And it appears from a duly certified copy from the records in the office of the recorder of mortgages for the parish of Orleans, which certificate is annexed to the writ of venditioni exponas under the authority of which the above-described property has been sold, that there are none others than the following mortgages recorded against the above-described property, viz:

1. Book 72, fo. 47. The one resulting from the inscription of a building contract by and before J. W. Breedlove, notary, the 3d August, 1858, entered into by said Semmes and Jamison & McIntosh, builders, by which said Semmes bound himself to pay unto said builders the sum of $15,000, they binding themselves to erect a dwelling house, &c., on the portion of ground having 60 feet on Annunciation st. by 15[illegible] feet 8 inches on Edward st.

2. B. 74, fo. 658. The one he granted on a portion of ground forming the whole of lots Nos. 16 and 17 and parts of Nos. 18, 14, and 13 firstly, secondly, and thirdly described, in favor of the Merchants' Mutual Insurance Company, to secure payment of $6,000 and interest, as per act before said Breedlove, notary, the 3d March, 1860.

3. B. P. 1, fo. 370. The privilege in favor of the 2d draining district.

101 Now, therefore, know all men by these presents that I, the U. S. marshal aforesaid, in consideration of the premises and by virtue of the laws in such case made and provided and under the authority of the acts of Congress of 6th Aug., 1861, the 17th July, 1862, and 3d March, 1863, in relation to confiscations, do hereby sell, transfer, assign, and set over unto the said Edward W. Burbank, as aforesaid, his heirs, administrators, executors, and assigns, all and singular the above-described property, with all the buildings and improvements thereon, rights, ways, privileges, hereditaments, and appurtenances to the same belonging and in any wise appertaining.

To have and to hold the above-described property, with all the buildings and improvements thereon, rights, ways, &c., as aforesaid, unto the said Edward W. Burbank, his heirs and assigns as aforesaid, to his and their proper use, benefit, and behoof forever.

In testimony whereof I grant these presents, under, my signature as U. S. marshal aforesaid, in the city of New Orleans, on this 15th day of

June, in the year of our Lord 1865, and of the Independence of the U. S. of America the 89th.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Executed in presence of—
C. BOISBLANC.
W. I. H. PREIS.

[$10.50 revenue stamp affixed and cancelled.]

U. S. district court, eastern district of L'a, city of New Orleans.

102 I certify that the foregoing deed of sale has this day been duly recorded in the office in sales-book B, fo. 247 & 248.

Clerk's office, June 22d, 1865.

[SEAL.] CH'S CLAIBORNE,
Clerk.

I, register of conveyances, certify that the present act was this day recorded in this office in book 91, fo. 59.

New Orleans, 12 February, 1866.

(Signed) P. SAUVÉ, *Register.*

Certificate from mortgage office, annexed to the deed.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the city of New Orleans, parish of Orleans, State of Louisiana, certifies that in the records of his office the following mortgages, standing in the name of Thomas J. Semmes, and recorded against the property described in the printed slip hereto annexed. (The printed slip is illegible and torn, and cannot be copied.)

B. 72, fo. 47. The one resulting from the inscription of a building contract, by act before J. W. Breedlove, notary, on the 3d Aug., 1858, entered into by said Semmes and Jamison & McIntosh, builders, by which said Semmes bounded himself to pay unto said builders the sum of $15,000, they binding themselves to erect a dwelling house on the portion of ground having 60 feet front on Annunciation street by 155.8 on Edward street. B. 74, fo. 658. The one he granted on a portion of ground forming the whole of lot No. 16 and 17, and part of lots 18, 14, and 15

103 1stly, 2dly, and 3dly described, in favor of the Merchants' Mutual Insurance Co., to secure $6,000 and interest, as per act before said Breedlove, notary, on 3d March, 1860, have been cancelled and annulled by virtue of an order of the U. S. district court dated the 18th of March last, and on file in his office, and in conformity to a certificate of C. Bullitt, U. S. marshal of said court, issued in pursuance of said order, dated and filed this day.

New Orleans, June 16th, 1865.

(Signed) CH'S E. LENES,
Ty Rec.

The decree of condemnation and the venditioni exponas offered in evidence by Burbank are already copied at pages 50 and 53. (See pages 83 and 84 of this transcript for copies of said decree of condemnation and venditioni exponas.)

Hearing of rule, Ap'l 11, '68.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } 7643.

The rule taken by Th's J. Semmes, 4th March last, came up for trial; Sullivan, Billings and Hughes and C. M. Conrad for pl'ff on rule; Fellows and Mills for E. W. Burbank; S. H. Torrey, U. S. att'y, for the government; Rufus Waples, late dist. att'y, appearing and taking part in the proceedings; and after hearing argument on the exceptions and the rule, the court took time to advise.

Order, rule absolute.—Extract from the minutes, Ap'l 15, '68.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THO'S J. SEMMES. } 7643.

For reasons orally assigned by the court, it is ordered and decreed that the exceptions filed by the dist. att'y and E. W. Burbank be overruled; that the rule taken by T. J. Semmes on 4th March last be
104 made absolute; that the default entered against said Semmes on 5th April, 1865, be set aside, and that he have leave to file his claim and answer herein.

Claim of T. J. Semmes.—Filed June 19th, 1868.

District court of the U. S. for the district of Louisiana.

THE UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF THOMAS J. SEMMES. } No. 7643.

To the Hon. Edward H. Durell, judge of the district court of the U. S. for the dist. of L'a:

And now comes into this hon. court Thomas J. Semmes and claims the following described property libelled herein, namely, the property mentioned in the libel herein in the square bounded by Annunciation, S't Thomas, Benjamin, and Edward or Melpomene streets, being lots Nos. 14, 16, and 17, and part of lot No. 18, on plan No. 203, deposited in T. O. Stark's office, notary public, drawn by B. F. Nichols, architect, and dated May 31st, 1853, together with the buildings and improvements thereon, and states that he is the true and lawful owner thereof.

Wherefore the respondent prays this honorable court would be pleased to pronounce against the libel aforesaid and condemn the libellants in costs and otherwise right and justice administer in the premises.

(Signed) TH'S J. SEMMES.

Sworn to before me March 4th, 1868.

(Signed) K. LOEW,
U. S. Com'r.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Proctors for Claimants.

105 *Answer of Th's J. Semmes.—Filed June* 19, 1868.

United States district court, dist. of L'a.

THE UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF TH'S J. SEMMES. } No. 7643.

To the honorable E. H. Durell, judge of the district court of the U. S. for the district of Louisiana.

The answer of Thomas J. Semmes, of New Orleans, in the State of Louisiana, intervening for his interest by leave of the court first had and obtained in the following described property, to wit, the property mentioned in the libel herein, in the square bounded by Annunciation, S't Thomas, Benjamin or Thalia, and Edward or Melpomene streets, in the first district of the city of New Orleans, being lots numbered fourteen (14), sixteen (16), seventeen (17), and part of lot numbered (18) eighteen, on plan (203) two hundred and three, deposited in T. O. Stark's office, notary public, drawn by B. F. Nichols, architect, and dated 31st May, 1853, together with all and singular the buildings, improvements thereon, answers and alleges as follows:

1st. That the allegation' in said libel contained are insufficient in law to warrant and authorize a decree of condemnation against the property aforesaid.

2d. That the President of the United States, as this respondent is informed and therefore avers, never authorized the seizure of the property aforesaid.

3d. That since the filing of the said libel, this respondent has been specially pardoned by the President of the United States for all offences by him committed arising from the participation, direct or implied,
106 in the late rebellion against the United States, and has duly accepted said pardon and complied with all the conditions therein contained, and he pleads said pardon in bar of these proceedings without admitting the truth of the allegations contained in the libel, and he makes due *perfect* of his said pardon and files the same herewith.

4th. That since the filing of said libel, the President of the U. S., by virtue of his amnesty proclamation issued Sept. 7th, 1867, has granted pardon and amnesty to all persons for offenses by them committed arising from participation, direct or implied, in the late rebellion against the U. S., and this respondent, not being one of the excepted, persons has taken the oath and complied with all the requisites of said proclamation, said oath being hereto annexed as part hereof, and without admitting the truth of the allegations contained in said libel, he pleads said amnesty proclamation in bar of these proceedings.

Wherefore this respondent prays that this hon. court will be pleased to pronounce against the libel aforesaid, decree restoration of the property aforesaid, and otherwise right and justice administered in the premises.

(Signed) TH'S J. SEMMES.

Sworn to and subscribed before me this 19th June, 1868.

(Signed) K. LOEW,
U. S. Com'r.

(Signed) SULLIVAN, BILLINGS and HUGHES, *of Counsel.*

Pardon.—Filed June 19, 1868.

107 Andrew Johnson, President of the United States of America, to all whom these presents shall come, greeting:

Whereas Thomas J. Semmes, of Louisiana, by taking part in the late rebellion against the Government of the United States, has made himself liable to heavy pains and penalties; and whereas the circumstances of his case render him a proper subject of executive clemency:

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Thomas J. Semmes a full pardon and amnesty for all offences committed arising from participation, direct or implied, in the said rebellion, conditioned as follows:

1st. This pardon to be of no effect until the said Thomas J. Semmes shall take the oath prescribed in the proclamation of the President dated May 29, 1865.

2d. To be void and of no effect if the said Thomas J. Semmes shall hereafter, at any time, acquire any property whatever in slaves or make use of slave labor.

3d. That the said Thomas J. Semmes first pay all costs which may have accrued in any proceedings instituted or pending against his person or property before the date of the acceptance of this warrant.

4th. That the said Thomas J. Semmes shall not by virtue of this warrant claim any property or the proceeds of any property that has been sold by the order, judgment, or decree of a court under the confiscation laws of the United States.

108 5th. That the said Thomas J. Semmes shall notify the Secretary of State in writing that he has received and accepted the foregoing pardon.

In testimony whereof I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington, this 19th day of October, A. D. 1865, and of the Independence of the United States the 90th.

[SEAL.] (Signed) ANDREW JOHNSON.

By the President:
(Signed) W. HUNTER,
Acting Secretary of State.

Oath of T. J. Semmes.—Filed with answer June 19, 1868.

No. 13.

I do solemnly swear in the presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of States thereun*to*, and that I will in like manner abide by and faithfully support all laws and proclamations which have been made during the late rebellion with reference to the emancipation of slaves: So help me God.

(Signed) THS. J. SEMMES.

Sworn to and subscribed before me this 9th day of April, A. D. 1868.

[SEAL.] (Signed) F. B. VINOT,
Dy Clerk U. S. Circuit Court 5th Judicial Circuit and District of Louisiana.

[5 cts. stamp.]

Certificate from Secretary of State.—Filed June 19th, 1868.

UNITED STATES OF AMERICA,
Department of State:

To all whom these presents shall come, greeting:

109 I certify that the document hereto annexed is a true copy of the original on file in this department. In testimony whereof I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 25th day of October, A. D. 1865, and of the Independence of the United States of America the 90th.

[SEAL.] (Signed) WILLIAM H. SEWARD.

Acceptance of pardon.

WASHINGTON D. C.,
October 25th, 1865.

Honorable WILLIAM H. SEWARD,
Secretary of State:

SIR: I have the honor to acknowledge the receipt of the President's warrant of pardon bearing date October 19th, 1865, and hereby signify my acceptance of the same with all the conditions therein specified.

I am sir, your obt. servant,
(Signed) THS. J. SEMMES.

Certificate of deposit of T. J. Semmes' oath.—Filed 19th June, 1868.

UNITED STATES OF AMERICA,
Department of State:

To all whom these presents shall come, greeting:

I certify that Thomas J. Semmes, of Louisiana, State of La., has deposited in this department his original oath, bearing date the 25th day of October, 1865, being in the form prescribed by the President's proclamation of May 29th, 1865.

110 In testimony whereof I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 25th day of October, A. D. 1865, and the Independence of the United States of America the 90th.

[SEAL.] (Signed) WILLIAM H. SEWARD.

Order, fixing cause for trial, June 19th, 1868.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

On motion of Sullivan, Billings & Hughes, it is ordered that this case be fixed for trial on Saturday, 27th June, inst., at 11 a. m., and that the district att'y and E. W. Burbank be notified thereof.

Notice.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

To U. S. att'y and E. W. Burbank, esq'r's:

You are hereby notified that the above cause has been assigned for trial on Saturday, the 27th day of June, 1868, at 11 a. m.

By order of court.

N. O., June 19, 1868.

(Signed) K. LOEW,
D'y Clerk.

Service.

Rec'd June 20th, 1868, by the U. S. marshal, and on the same day of June, 1868, served a copy of within notice on U. S. att'y named herein in hands of John Fahy, cl'k, at office custom-house, in this city, and on same day served copy of same on E. W. Burbank, named herein, personally at office 71 Tchoupitoulas street, in this city.

New Orleans, June 22, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

111 *Minute of evidence taken on trial, June 27th, 1868.*

U. S.
vs.
T. J. SEMMES. } 7643.

Defendant offered in evidence the President's pardon and the certificate of the Secretary of State showing his acceptance of the same; also his amnesty oath under the President's proclamation of 7th September, 1867.

All the above documents are copied with the def't's claim and answer at pages 130 to 135. (See pages 154 to 159 of this transcript for copies of above documents.)

Hearing and decree of restitution, June 27th, 1868.

THE UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF THS. J. SEMMES. } No. 7643.

This cause came up for trial (U. S. att'y for libellants; Sullivan, Billings & Hughes, for defendant), when, after hearing the pleadings and the evidence, the defendant having received the President's pardon, which he has accepted with all the condition' therein specified, as appears from the certificate of the Secretary of State on file, it is ordered, adjudged, and decreed that the libel be dismissed and the libelled property restored to the defendant and claimant upon the payment of all costs.

Judgment rendered June 27th, 1868.

Judgment signed July 2d, 1868.

(Signed) E. H. DURELL, *Judge.*

Petition for writ of error.—Filed July 3d, 1868.

United States district court for the district of Louisiana.

112 UNITED STATES OF AMERICA
vs.
6 LOTS OF GROUND, PROPERTY OF TH'S J. SEMMES. } No. 7643.

To the Hon. H. H. Durell, judge of the district court for the district of Louisiana:

Your petitioners, the United States of America, represented by Samuel H. Torrey, their attorney for the district of Louisiana, respectfully represent that in the above-entitled cause, wherein your petitioners were the libellants of 6 lots of ground, which were condemned to your petitioners, judgment was rendered and proceedings had subsequent to said condemnation, and on the 27th day of June, 1868, judgment was rendered restoring said property to Thomas J. Semmes. That in the record and proceedings in said cause subsequent to the condemnation and sale of said property, and also in the rendition of said judgment rendered on 27th day of June, 1868, restoring said property to said Semmes, manifest errors have occurred, to the great damage of your petitioners.

Wherefore your petitioners pray a writ of error in said cause, returnable to the next term of the circuit court of the United States for this district with supersedeas; and as in duty bound your petitioners will ever pray.

(Signed) SAM. H. TORREY,
U. S. Att'y

Order.

Let a writ of error be allowed in this case, as prayed for, and according to law, returnable to the circuit court of the U. S. for the 5th circuit and dist. of L'a on the 1st Monday of November next, the same to operate as a supersedeas.

July 3d, 1868.

113 (Signed) E. H. DURELL, *Judge.*

District court of the United States, dist. of Louisiana.

I certify the foregoing 140 pages to contain and form a true, correct, and complete transcript of all the proceedings had, documents filed, and evidence adduced in the trial of the case of the United States vs. Six Lots of Ground, the property of Tho's J. Semmes, No. 7643 of the docket, with the exception of the act of mortgage withdrawn by the Merch'ts' Mutual Ins. Co.

In testimony whereof I grant these presents, under my signature and the seal of our court, at New Orleans, this 1st day of Sept'r, A. D. 1868, and of the Independence of the United States the 93d.

[SEAL.] (Signed) K. LOEW,
D'y Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States in and for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one

of you, between the United States and 6 Lots of Ground, property of T. J. Semmes, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under you seal, dis-
114 tinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, together with this writ, so that you have the same at New Orleans on the first Monday of December next in the said circuit court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

Witness the honorable S. P. Chase, Chief Justice of the said Supreme Court of the United States, this 9th of July, in the year of our Lord one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) D. URBAN,
Clerk of the U. S. Circuit Court for La.

Writ of error received, &c.

United States district court.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

Writ of error. Received July 9th, 1868.
(Signed) K. LOEW,
Dy Clerk.

Citation of appeal.

United States district court, district of Louisiana.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

The United States of America to Thomas J. Semmes, greeting:

You are hereby cited and admonished to be and appear before the circuit court of the United States for the 5th circuit and district of Louisiana at its next term, to be holden in the city of New Orleans,
115 State of Louisiana, to answer the writ of error taken by the United States in this cause, and that you show cause, then and there, if any there be, why the judgment rendered against the said United States should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. Durell, judge, this 9th July, in the year of our Lord 1868, and the 93d of the American Independence.

(Signed) E. H. DURELL, *Judge.*

Citation of appeal.

United States district court.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } No. 7643.

Received July 8th, 1868, by the United States marshal, and on the 10th day of July, 1868, served copy of within citation of appeal on T. J. Semmes, claimant, named herein personally, at office, 75 Carondelet street, in this city.

New Orleans, July 13, '68.

(Signed) S. W. REED,
Dy U. S. M'l.

Hearing and submission of cause.—Extract from the minutes of June 11, '70.

NEW ORLEANS, *Monday, June 6th*, 1870.

Court met pursuant to adjournment.

Present, his honor J. P. Bradley, associate justice of the Supreme Court; present, his honor W. B. Woods, circuit judge.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } No. 5669.

This cause came on to be heard on the transcript of the record from the district court of the U. S. for the district of L'a.

116 A. B. Long, U. S. att'y, and W. R. Mills for pl'ffs in error. Robert Mott for def't in error.

After hearing argument the court took time to advise.

Order, decision withheld.—Extract from the minutes of June 11*th*, 1870.

In this case, for reasons assigned, the court withholds its decision until the next *time* of the Supreme Court of the United States.

Opinion—Filed June 20*th*, 1872.

Circuit court of the United States, fifth circuit and district of Louisiana.
On error.

UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF Thomas J. Semmes.

This is a writ sued out by the United States to reverse a judgment of the district court rendered June 27th, 1868, dismissing the libel of information and restoring to the claimant, Thomas J. Semmes, the property seized, which had been sold under a decree of confiscation rendered in the case in April, 1865.

A preliminary motion is made to dismiss the writ of error. This must

be denied. (1.) The first ground assigned is that the district attorney had been instructed by the Attorney-General to dismiss it. This if proved is no reason for dismissing the writ. The district attorney represents the United States, and the correspondence between him and the Attorney-General is confidential in its nature, and cannot be cited by third persons. But I see no proof of the fact. (2.) The second
117 ground is, that a writ of error does not lie in the case. This has been settled to the contrary by the Supreme Court. (3.) The third ground is that the writ of error, being sued out in July, 1868, was made returnable on the first Monday of December, then next; whereas the next term of the court was to commence on the first Monday of November, and the citation was returnable generally to the next term. The error in the writ seems to have originated from using a blank printed writ intended for removing judgments to the Supreme Court, and is evidently a mere clerical oversight. A recent statute authorizes an amendment of the test and return of writs of error, and would probably authorize the amendment of this. But the copy of the writ lodged with the clerk of the district court for the defendant in error is correct, having the return day on the first Monday of November; and the record was actually returned and filed in this court before the 1st Monday in November. I think therefore that the defect is immaterial and is cured.

The error relied on by the government for a reversal of the judgment is this: That a regular default was made in the case and entered on the 8th of September, 1863, and a decree of confiscation made upon due proof on the 5th of April, 1865; that upon this decree a venditioni exponas issued on the 11th of April, 1865, under which the marshal regularly sold the property at auction on the 13th of June, 1865, and one Edward W. Burbank became the purchaser; and that the marshal executed a deed to said Burbank for the property. That the claimant,
118 Semmes, did not apply to have the judgment opened and the sale set aside until March 4th, 1868, nearly three years after the rendition of the judgment; that nevertheless the default was opened, and the claimant was allowed to file a claim and answer on the 15th of April, 1868, and that upon his pleading a pardon granted in October, 1865, and the proclamation of amnesty of September 7th, 1867, and showing that he had taken the requisite oaths and performed the conditions required by the pardon and amnesty, the district court adjudged that the libel of information be dismissed and the libelled property restored to the claimant upon the payment of all costs.

It is contended on behalf of the government that this last proceeding in 1868 is entirely erroneous and without authority.

The counsel for the defendant in error attaches some importance to the fact that the decree of confiscation had by consent been partially opened before and set aside as to one of the lots seized. This took place before the sale by the marshal, on the application of a man by the name of Bloom, who showed that he had long before purchased that lot from Semmes. But I do not regard this transaction as having the slightest effect on the decree further than as it related to the lot claimed by Bloom. The opening of the decree and the dismissal of the libel were expressly confined to that particular lot; and the decree remained in full force with regard to all the residue of the property.

119 And I do not perceive any error in the proceedings up to and including the decree of condemnation and sale, and if there had been error, I do not think that the district court three years after the rendering of the decree could sit as a court of error upon its own decree and reverse it. But the court has done more. It has not only reversed its

decree, but has made a decree to restore the property to the claimant after its sale under and by virue of the decree. It is a general rule that a judicial sale made by virtue of a judgment which the court had jurisdiction to render will stand though the judgment itself be afterwards reversed for error. In my judgment the district court had general authority as at common law thus to set aside its judgment regularly rendered and the judicial sale made by virtue thereof. If I had authority so to do, it must have been derived from the particular circumstances of the case, as affected by the pardon and amnesty pleaded by the defendant.

Do such pardon and amnesty annul past transactions so far as to invalidate the previous judicial confiscation and sale of the claimant's property? Such a proposition seems to me utterly untenable on general principles, and besides the pardon itself, which was pleaded in this case, contained an express condition that the defendant should not claim any property or proceeds of any property that had been sold by the other judgment or decree of a court under the confiscation laws of the United States. This condition is a bar to the defendant's claim.

120 It has been repeatedly held that a pardon may be partial or subject to conditions. Of course the condition must be a lawful one.

As far as I can see, the condition in question is entirely free from any taint of illegality. Whether it would have been binding on the defendant if he could have shown that the confiscation proceedings were illegal and void, it is not necessary to decide. They were legal and valid when they were taken. The order of the district court opening the default, and the decree dismissing the information and restoring the defendant in error the property sold must be reversed, and the original decree of confiscation and the proceedings thereon must stand confirmed.

Decree.—Extract from the decree docket, June 20, 1872.

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1872.

NEW ORLEANS, *Thursday, June 20th*, 1872.

Court met pursuant to adjournment.
Present, Hon. J. P. Bradley, associate justice Supreme Court.

UNITED STATES *vs.* 6 LOTS OF GROUND, THE PROPERTY OF T. J. Semmes.	5669. In error at the suit of the United States.

For reasons assigned in the written opinion of the court this day delivered and on file, it is ordered that the decree made by the district court on the 27th June, 1868, restoring the libelled property to the defendant be avoided and reversed, and it is now ordered, adjudged, and decreed by this court that the decree of condemnation originally

121 pronounced by the district court stand and remain in full force and effect, and that the sale made by virtue thereof do stand confirmed.

Decree rendered June 20, 1872.
Decree signed June 20, 1872.

(Signed) JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 153 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the United States, plaintiff in error, vs. Six Lots of Ground, the property of Thomas J. Semmes, defendant in error, No. 5669 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans this 18th day of March, A. D. 1873.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said
122 certificate and is now the clerk of said *clerk*. That said certificate is in due form of law, and that full faith and credit are due to his official attestation as such clerk.

Given under my hand at the city of New Orleans, in said district, this 18th day of March, A. D. 1873.

(Signed) E. H. DURELL, *Judge.*

Order, case continued by preference.—Extract from minutes of Thursday, April 17, 1873.

4th district court for the parish of Orleans.

THOMAS J. SEMMES *vs.* EDWARD W. BURBANK. } No. 23327.

This case came on this day for trial, in pursuance of a continuance from the 2d inst., when, by agreement of counsel, the same was ordered by the court to be continued by preference.

Testimony.—Filed May 1st, 1873.

Fourth district court for the parish of Orleans.

T. J. SEMMES *vs.* E. W. BURBANK. } No. 23327.

Testimony taken in open court, May 1st, 1873.

A. E. BILLINGS, sworn for def't, says:

Q. You are acquainted with the property now in the possession of M'r E. W. Burbank as his residence?

A. At the corner of Annunciation and Melpomene—yes, sir.

Q. You have visited the property?

A. Yes, sir; I have.

Q. One of the lots, which is the lot in dispute, is the lot on which
123 a cistern is. Presuming that to be the case, what would you consider a reasonable value per month or year for that lot as rental?

A. It would be worth of little value to any one except to M'r Burbank. I don't know that it could be put down as of any value, except as a store-yard.

Q. As a store-yard what is its value per month, rent?

A. Well, I know of larger lots, by a good deal, that rent for $2 a month. Mr. Burbank has one on the levee that he rents for $1 $\frac{60}{100}$ a month.

Q. What would be a reasonable estimation of rent of that lot a year?

A. I think perhaps $10 a year, and I don't know of any use that it could be put to, except for storing something that is not of much value. It might be worth more than that to Mr. Burbank, on account of his house setting so near, and the cistern on it.

Cross-examination waived.

JAMES GRAHAM, sworn for def't:

Q. During what years were you marshal of the U. S.?

A. Between June, 1863, and August, 1864.

Q. Do you remember a certain suit instituted and bearing the title of The U. S. vs. Six Lots of Ground, the property of T. J. Semmes, under the confiscation act?

A. Yes, sir; there was such a suit, I think.

Q. Immediately or shortly did you come in possession of that property?

A. Well, sir, it is now over 10 years ago since I was marshal, and I have had no occasion to refer to any proceedings, and I have
124 a very dim recollection of any of the transactions.

Q. Have you remembrance sufficient to state who you allowed to remain in possession of that property after it came in your possession?

A. No, sir; I suppose there was a keeper.

Q. You don't remember who was place' there by you as keeper after you as marshal/ took possession?

A. No; I can't recollect.

Q. Who was your successor in office?

A. Cuthbert Bullitt.

Q. Do you know where he now resides?

A. No; I don't.

Q. Do you know whether he resides in the State of Louisiana?

A. I do not; I hav'n't see' him more than once in 3 or four months for the last year or two.

Cross-examination waived.

T. J. SEMMES states: I admit that at and subsequent to the 17th of July, 1862, I did act as a member of congress of the so-called Confederate States of America in that branch known as the senate of the Confederate States and as such aided the Confederate States in the war against the United States until the final surrender in 1865. I admit that prior to the confiscation proceedings Mr. C. A. Weed was placed in possession of the property described in those proceedings by the military authority of the United States, and he was in possession when the proceedings were instituted.

125 E. W. BURBANK, sworn in his own behalf, says: I am the defendant in this suit.

Q. Previous to the purchase made under the marshal sale in the suit of the U. S. vs. Six lots of ground belonging to T. J. Semmes, did you examine by description or otherwise what purported being sold by the marshall?

A. I did; both of the premises and by map that was shown at the auctioneers' exchange.

Q. In the purchase which you made, or bid which you made, were you influenced by such description?

(Objected to; objection sustained.)

Q. Can you exhibit the plan that you did examine?

A. I can.

Q. State, Mr. Burbank, whether this is the plan?

(Plan B X shown to witness.)

A. This is the plan that was exhibited at the auctioneers' exchange.

Q. Are you familiar with the property in dispute in this case?

A. I am.

Q. This plan B X is the plan of the property in dispute?

A. It is.

Q. Will you go on and explain regarding it?

A. In regard to this lot?

Q. What is the number of lots as shown by the plan?

A. There is five lots here, numbers 14, 15, 16, 17 and 18, which lots runs the whole length and breadth. It corresponds with the marshall's deed.

Q. In that way you had a continuous front on Edward street from the corner of Annunciation, did you not?

126 A. Yes, sir.

Q. Where did you first see that plan?

A. I saw it hanging up in the merchants and auctioneer's exchange.

Q. When?

A. Some weeks, and I don't know but months, previous to the sale of the property, as it was advertised several times, it was there some length of time hanging on the frame.

Q. Do you know who lived in that house previous to your possession?

A. C. A. Weed.

Q. Does that plan correctly represent the lot in dispute in connection with the balance of the property?

A. Yes, sir, I think so. M'r Weed had possession of all the five lots that is marked out here, when I visited the place.

Defendant offers in evidence plan marked B X.

Order, case submitted.—Extract from the minutes May 1st 1873.

4 dist. court, &c.

THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 23,327.

This case came on this day for trial, in pursuance of a continuance from the 17th ult'o, Semmes & Mott, esq., of counsel for plaintiff, Fellows & Mills, esq., of counsel for defendant; when, after hearing further evi-

dence and argument of counsel, the case was submitted and taken under advisement of the court.

127 *Reasons for judgment.—Filed May 24th*, 1873.

Fourth dist. court.

THOMAS J. SEMMES *vs.* EDWARD W. BURBANK. } No. 23,327.

This is a petitory action, instituted by Thomas J. Semmes against Edward W. Burbank, both of whom reside in this city. The plaintiff alleges that he is the sole owner and absolute proprietor of a certain lot of ground in the first district of the city of New Orleans, in the square bounded by Annunciation, S't Thomas, Edward, and Benjamin streets, said lot being the front part of a lot designated by the number fifteen (15,) on a plan drawn by B. F. Nichols, architect, dated 31st May, 1853, and deposited in the office of T. O. Stark, notary public in this city, as plan No. 203; that the front part of said lot owned by petitioner measures 22 feet 10 inches 3 lines front on Edward street, by a depth of sixty feet, was acquired by petitioner from M'r's Abigail L. Stark, by an act of exchange passed on the 19th of May, 1858, before D. I. Ricardo, notary public. Petitioner avers that on the 17th of June, 1865, Edward W. Burbank unlawfully obtruded himself into and took possession of said lot, and the buildings thereon, and has ever since withheld and now unlawfully withholds possession of the same from petitioner.

Petitioner prays that said Burbank be cited, and that after due proceedings petitioner be adjudged the lawful owner of said lot of ground and improvements, and entitled to the possession thereof, and that said Burbank be decreed to surrender possession to petitioner, and

128 that the sheriff do put petitioner in possession, &c.

The answer of the defendant admits his possession of the property claimed and described in plaintiff's petition; that he is the owner and possessor in good faith of said described property under an adjudication made to him on the 15th of June, 1865, by the marshal of the United States, for the eastern district of Louisiana, in virtue of a writ of venditioni exponas issued by the United States district court in the suit entitled "The United States vs. Six lots of ground, the property of T. J. Semmes," numbered 7643, of the docket of said court.

Further answering defendant says, that the said T. J. Semmes, at and subsequent to the 17th of July, 1862, did act as a member of Congress of the so-called Confederate States of America, and which fact respondent pleads in bar to the present suit of T. J. Semmes, in virtue of and in accordance with the provisions of the act of Congress and specially the 5th section thereof, entitled "An act to suppress insurrection, to punish treason, to seize and confiscate the property of rebels, and for other purposes," approved 17th of July, 1862; that said T. J. Semmes is one of the persons described in the said 5th section of said act of Congress; that said T. J. Semmes subsequent to the said 17th of July being a citizen of the State of Louisiana, and resident therein, as also while temporarily in the State of Virginia, was engaged in armed rebellion against the Government of the United States, and aided and abetted said rebellion, and did not cease to aid, countenance and

129 assist said rebellion and return to his allegiance to the United States within sixty days after public warning and proclamation

duly given and made on the 25th of July, 1862, by the President of the United States, and which facts respondent pleads in bar to the present suit in virtue of and in accordance with the provision and specially the sixth section of said act of Congress, approved July 17th, 1862, and the said proclamation of the President of the United States of the 25th of July, 1862, and defendant alleges that said T. J. Semmes is one of the persons described in said sixth section of said act of Congress. Defendant prays that plaintiff's petition and claim be dismissed with costs.

The plaintiff admits that at and subsequent to the 17th of July, 1862, he did act as a member of Congress of the so called Confederate States of America, in that branch known as the Senate of the Confederate States, and as such aided the Confederate States in the war against the United States, until the final surrender in 1865. He admits that, prior to the confiscation proceedings, C. A. Weed was placed in possession of the property described in those proceedings, by the military authority of the United States, and he was in possession when these proceedings were instituted.

The title deeds by which the plaintiff acquired the property in controversy are in evidence; their validity is not questioned.

On the 7th of August, 1863, a libel was filed in the United States district court against six certain lots of ground, alleged to be owned by Thomas J. Semmes on the 17th day of July, 1862, and previous
130 thereto. Five of those lots are allege' to be situated in the square bounded by Annunciation, S't Thomas, Edwards, and Benjamin streets. The sixth lot is located in the square bounded by Edwards, Estelle, Camp, and Magazine streets. The lot last referred to was claimed as the property of Edward Bloom, and was subsequently duly decreed to be his property. The five lots in the square above described are designated in the libel of information as lot No. 14, one half of lot No. 18, having a front of twelve feet on Annunciation street. Three certain lots of ground in said square designated as lots No. 14, No. 16, and 17, all on a plan by B. F. Nichols, dated 31st May, 1853. The monition of the marshal, dated 11th of August, 1863, designated the lots in the same manner, and the decree of condemnation refers to and embraces only the property described in the libel. In neither the libel, the monition, nor the decree of condemnation, is there any reference whatever to lot No. 15, or to the fractional part thereof purchased by the plaintiff; the marshal's deed to defendant purports to convey the whole of lot No. 15 to the latter.

It is, therefore, clear that as the decree of condemnation did not apply to lot No. 15, the marshal's sale of that lot was utterly without warrant or authority of law, and could have no effect as against the plaintiff or change the ownership of that lot of ground.

It is argued by defendant's council that lot No. 15 is identical with one of the two lots, each of which is designated as lot No. 14, and that the number 14 used a second time was substituted by mistake
131 for number 15, the lot contemplated by both the libel and the decree, as well as by the sheriff's deed. If the lot 15 could be substituted for either of the lots which is called No. 14, and convey the same area, there would be much force in that argument, but the lot claimed by plaintiff is only one-half of lot No. 15, and the other half of that lot is owned by another person never accused of disloyalty. The government, then, did not condemn or sell the portion of lot No. 15 belonging to Tho's J. Semmes, and it did not sell and could not have sold the other portion of said lot, owned by a person who had not aided the rebellion. It cannot, therefore, be said that the decree of condemnation

was contemplated to cover lot No. 15, but, by an error in the description, the No. 14 was substituted for No. 15.

A pardon of President Johnson to plaintiff, dated October 19, 1865, and its formal written acceptance, are in evidence. It is contended that the acceptance of that pardon precludes him from claiming any property belonging to him sold by United States authority. In this case, as there was no authority to sell, there could have been no sale, and he is only claiming from a private citizen who seized his property unlawfully. It is urged also by defendant that as the disputed property is shown to have been seized by the United States authorities previous to the filing of said libel, and placed by them in the care of Weed, this possession was continued in the hands of the defendant when the marshal put him in possession of the property.

132 The act of March 12, 1863 (12 Statutes at Large, p. 820), to provide for the collection of abandoned and captured property in insurrectionary districts within the United States, did not confiscate or in any case absolutely divest the property of the original owner, even though disloyal. By the seizure the government constituted itself a trustee for those who were entitled, or whom it should thereafter recognize as entitled. United States vs. Klein, 13 Wallace, 128.

The facts that the plaintiff acted as member of Congress of the so-called Confederate States, and is one of the persons described both in the 5th and 6th sections of the said act of 1862, are no good plea in bar of this suit, because the pardon of President Johnson above referred to, granted on conditions, blotted out any offense that defendant may have committed in aiding the rebellion if he complied with conditions imposed, and it is not alleged that he did not; but whether he did or did not comply with those conditions, and whether the special pardon aforesaid has or has not the effect of blotting out the political offenses aforesaid and the disabilities attaching to them, there can be no doubt that his political offenses were washed away on the 25th of December, 1868, by the President's proclamation granting, unconditionally and without reservation, full pardon and amnesty to every person who had participated in the rebellion; of that proclamation this court is bound to take judicial notice.

The plaintiff owned five lots in the square above designated; four of those lots were sold by the United States. In the war of the

133 rebellion the United States had belligerent as well as sovereign rights; they had a right to confiscate the property of public enemies wherever found; the right of confiscation exists as fully in case of a civil war as it does when the war is foreign, and rebels in arms against the lawful government may be treated as public enemies. The confiscation acts, with the exception of the first four sections of the act of 1862, were an exercise of the war power of the government and not an exercise of its sovereignty or municipal power. Tho's J. Semmes was not only an offender against the government but also one of its public enemies. As an enemy his property was liable to confiscation without any reference whatever to his personal quiet. The United States marshal, under a proper decree of the United States district court, sold the four lots above referred to and they are now irrevocably lost to their former owner, the plaintiff herein. The fifth lot, which is but the half of lot No. 15, was never condemned by any competent court, and was, in contemplation of law, never sold by the United States. The adjudication and pretended sale of it by the said marshal to said Burbank to the contrary notwithstanding.

The piece of ground in controversy was and still is vacant property:

it has no buildings on it and, with the exception of a cistern, no improvements. An estimation of its rent by one witness was placed at $10 per annum, while another witness estimates its rent at $10 per month.

There is no evidence that a dollar of revenue was received from
134 that lot by the defendant from 1865 to the present time. If defendant had the use of the lot for holding his certain during that time, I presume he was compelled to pay taxes for it, and the taxes would seem to be a fair equivalent for the use of the lot, and the plaintiff would not be entitled to recover anything for rents or revenues.

Let there be judgment, therefore, in favor of the plaintiff, Thomas J. Semmes, and against the defendant, Edward W. Burbank, decreeing the said Semmes to be the lawful owner of said lot of ground and improvements described in the petition herein, and that he is entitled to the possession thereof; and it is further ordered that said Burbank surrender possession to said Semmes, and that the sheriff do put the said Semmes in possession, and that said Burbank pay costs of suit.

Judgment rendered May 24th, 1873.

T. J. SEMMES
vs.
E. W. BURBANK. } No. 23327.

For the reasons this day assigned in the written opinion of the court delivered and on file, and the law and the evidence being in favor of plaintiff, it is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, Thomas J. Semmes, and against defendant, Edward W. Burbank, decreeing the said plaintiff to be the lawful owner of the lot of ground described in plaintiff's petition, to wit: "A certain lot of ground situated in the fourth district of the New Orleans in
135 the square bounded by Annunciation, S't Thomas, Benjamin or Thalia, and Edwards or Melpomene streets; said lot is the front part of a lot designated by the number fifteen (15) on a plan drawn by B. F. Nichols, architect, dated 31 May, 1853, and deposited in the office of T. O. Stark, notary public, in this city, as plan No. 203, the whole of said lot No. 15 having been acquired by M'r's Abigail L. Stark from H. B. Whitlock by act passed before said Stark on the 26th day of June, 1857, and measures twenty-two feet ten inches and three lines front on Edward street, seventeen feet in width in the rear, and one hundred and twenty feet eleven*th* inches and seven lines in depth on the dividing line of lot No. fourteen, on the same plan, and one hundred and twenty feet on the opposite line, and the front part of said lot number fifteen measures twenty-two feet ten inches and three lines front on Edward street by a depth of sixty feet, and was acquired by said plaintiff from the said M'r's Stark by an act of exchange passed on the 19th May, 1858, before D. I. Ricardo, late a notary public in this city, as well as all the improvements thereon and thereunto belonging." And that said plaintiff, Thomas J. Semmes, be entitled to the possession of said lot of ground and improvements. And it is further ordered, adjudged, and decreed that said defendant, Edward W. Burbank, forthwith surrender to said plaintiff, Thomas J. Semmes, the possession of said lot of ground with the improvements thereon, and that the civil sheriff of this parish do put the said plaintiff, Thomas J. Semmes, in possession of said lot of
136 ground and improvements, and that defendant pay the costs of suit.

Judgment rendered May 24, 1873, signed June 24, 1873.

(Signed) B. L. LYNCH, *Judy*.

Rule for new trial.—Filed May 26th, 1873.

Fourth district court for the parish of New Orleans.

THOS. J. SEMMES
vs.
E. W. BURBANK.

On motion of Fellows and Mills attys. of E. W. Burbank defendant in above entitled and numbered cause, it is ordered that Thos. J. Semmes, plaintiff, show cause on Thursday, the 5th of June, 1873, at 11 o'clock a. m., why a new trial should not be granted for the reasons—

1. That said judgment is contrary to law and evidence, and among other reasons—

2. That the court erred in not considering that the property, the subject matter in this suit, was not conveyed to defendant by the adjudication of the marshal of the United States for the district of Louisiana.

3. That the court erred in considering that the title of defendant to said property had not vested in the United States district court for district of Louisiana and that the present demand of plaintiff could only be considered and adjudicated upon by said U. S. district court.

4. That the court erred in allowing plaintiff to contest defendant's title, after having introduced in evidence said marshal's adjudica-
137 tion and deed and without having alleged in his (plaintiff) petition any error, defects, or nullities in the proceedings binding to said adjudication and deed.

5. Because the court erred in overruling the plea that said plaintiff could not contest the possession of defendant, he said plaintiff having admitted the facts bringing him within the provision of the statute of the United States of the prohibiting him from contesting said profession.

Copy of rule for new trial to be served on T. J. Semmes.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

MONDAY *the 26th day of May*, 1873.

Present, the Honorable B. L. Lynch, judge.

THOMAS J. SEMMES
vs.
E. W. BURBANK. } No. 23327.

On motion of Fellows & Mills, esq., of counsel for defendant, and for reasons herein set forth and on file, it is ordered by the court that plaintiff do show cause on Thursday the 5th day of June next, at 11 o'clock a. m., why a new trial should not be granted in this cause. Extract from the minutes.

[SEAL.] (Signed) OSCAR AROYO,
Deputy Clerk.

Service.

Received May 26th, 1873, and on the 28th day of same month and year served copy of within rule on plaintiff, Thomas J. Semmes,

thro' "R. C. Mott," esq., his attorney at law, in person. Ret'd same day.

(Signed) P. R. RELIMPIO.
Dy Sheriff.

138 *Order, rule continued.—Extract from the minutes of June 5th, 1873.*

THOMAS J. SEMMES
vs.
E. W. BURBANK. } No. 23327.

The rule taken by defendant for a new trial of this case came on this day for trial, when the court ordered the same to be continued to the 13th instant at 11 o'clock a. m.

Order, rule submitted.—Extract from June 13th, 1873.

4th dist. court.

THOMAS J. SEMMES
vs.
E. W. BURBANK. } No. 23327.

The rule taken by defendant for a new trial came on this day for trial, (Fellows & Mills, esq., of counsel for plaintiff in rule, defendant in rule in propria persona), when, by argument of counsel, the rule was submitted and taken under advisement by the court.

Order, rule for new trial dismissed.—Extract from June 24, '73.

4th dist. c't

THOMAS J. SEMMES
vs.
E. W. BURBANK. } No. 23327.

For reasons this day orally assigned by the court, it is ordered that the rule filed by defendant on the 26th day of May, 1873, be dismissed, and that the new trial therein asked be refused.

Motion for appeal.—Extract from the minutes of June 24th, 1873.

139 4th d't c't.

THOMAS J. SEMMES
vs.
E. W. BURBANK. } No. 23327.

On motion of Fellows & Mills, att'ys of E. W. Burbank, defendant in the above entitled and numbered suit, and on representing to the court that said defendant feels aggrieved by the final judgment rendered against him in this cause on the 24th May, 1873, and signed on the 24th June, 1873, and desires to appeal from the same, it is ordered that a suspensive appeal be granted to said E. W. Burbank from said final judgment, returnable to the supreme court on the first Monday of November, 1873, on said appellant furnishing bond and conditioned according to law in the sum of five hundred dollars.

Appeal bond.—Filed June 24th, 1873.

THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 23327.

Know all men by these presents that we, Edward W. Burbank, as principal, and Samuel N. Burbank, are held and firmly bound unto the clerk of the fourth district court for the parish of Orleans, and his successors in office, in the sum of five hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the above bounded Edward W. Burbank has this day
140 filed a motion of suspensive appeal from a final judgment rendered against him in the suit of Thomas J. Semmes vs. Edward W. Burbank, being No. 23327, in the fourth district court for the parish of Orleans, on the 23d day of May, 1873, and signed on the 23d of June, 1873:

Now the condition of the above obligation is such that *that* the above bound Edward W. Burbank shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be last in the appeal; otherwise that the said Samuel N. Burbank shall be liable in his place.

(Original signed) E. W. BURBANK. [L. S.]
" S. N. BURBANK. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) WM R. MILLS.

STATE OF LOUISIANA,
City of New Orleans:

Fourth district court for the parish of Orleans.

I, Edward De Blois, clerk of the fourth district court for the parish of Orleans, do hereby certify that the foregoing two hundred and fifteen pages contain a true, full, correct, and complete transcript of all the proceedings had, of all the documents filed, and of the testimony and evidence adduced on the trial of the case wherein Thomas J. Semmes is plaintiff and Edward W. Burbank is defendant, instituted in this court and now on the records thereof, under the number 23327 of the docket of said court.

141 In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans on this fifteenth day of July in the year of our Lord one thousand eight hundred and seventy-three, and in the 98th of the Independence of the U. S.

[SEAL.] (Signed) ED. DE BLOIS, *Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme court of the State of Louisiana.

No. 4887. Transcript of appeal. Filed November 13, 1873.
(Signed) M. P. JULIAN, *Deputy Clerk.*

Answer to appeal.—Filed Oct. 29th, 1874.

Supreme court of Louisiana.

T. J. SEMMES
vs.
E. W. BURBANK. } No. 4887.

Now comes the appellee and prays that the judgment in the court below in his favor may be amended so as to allow the plaintiff and appellee the damages and rents and profits as claimed in the petition filed by him in the court below.

(Signed) SEMMES AND MOTT.

Order to submit.—Filed April 15th, 1876.

Supreme court.

THO'S J. SEMMES
vs.
E. W. BURBANK. } No. 4887.

142 Submit this case for plaintiff and appellee on briefs filed by him.
April 15, 1876.

(Signed) SEMMES AND MOTT.

Cause submitted.—Extract from minutes.

SATURDAY, *April* 15, 1876.

The court was duly opened. Present, their honors James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices. Absent, John T. Ludeling, chief justice.

THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 4887.

This case was called for trial, and, having heard argument from Thomas J. Semmes, plaintiff and appellee, and William Reid Mills, esq., on behalf of the defendant and appellant herein, the court took the case under advisement upon the briefs on file and to be filed on or before the 22d instant.

Judgment and decree.—Extract from minutes.

MONDAY, *May* 15, 1876.

The court was duly opened, pursuant to adjournment. Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

M'r Justice Wyly pronounced the judgment and decree of the court in the following case:

143 THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 4887.

On appeal from the fourth district court for the parish of Orleans.

It is ordered that the judgment herein in favor of plaintiff be amended so as to condemn defendant to pay plaintiff five dollars per month for

rent from 27th day of December, 1866, until possession of said property is delivered to plaintiff, and as amended that it be affirmed. It is further ordered that defendant pay costs of both courts.

Opinion of the court.—Filed May 15, 1876.

THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 4887.

Appeal from fourth dist. court, parish of Orleans.

M'r Justice Wyly:

This is a petitory action for the recovery of one-half of lot 15, fronting on Edward street in the square bounded by Annunciation, Benjamin, S't Thomas, and Edward streets. Defendant claims title under the decree of confiscation and the sale by the marshal under a writ of venditioni exponas in 1865. He admits the property belonged to plaintiff, but contends that the title was conveyed to him by said proceedings. Plaintiff concedes the regularity of the confiscation proceedings, but avers that the property in question was not embraced therein.

It appears plaintiff owned several lots in the square mentioned. By the decree of condemnation his title was divested of lots 14, 16,
144 17, and part of 18. Lot 15 was not mentioned either in the libel, the monition, or the decree of condemnation. The venditioni exponas authorized the sale of the property described in the libel. The marshal's deed, however, embraced lot 15.

It is clear the marshal could only make a valid title to the property embraced in the decree of condemnation, for that was all that became vested in the United States. And he could not sell property not authorized by the writ put into his hands for execution. Plaintiff's title has never been divested as to the property in controversy, and he must recover in this suit. He claims rent for his property unlawfully held and detained by defendant. From the evidence we fix the rent at the rate of five dollars per month from 27th December, 1866.

It is therefore ordered that the judgment herein in favor plaintiff be amended so as to condemn defendant to pay plaintiff five dollars per month for rent from 27th day of December, 1866, until possession of said property is delivered to plaintiff, and as amended that it be affirmed. It is further ordered that defendant pay costs of both courts.

Petition for rehearing.—Filed May 22*d*, 1876.

Supreme court of Louisiana.

THOMAS J. SEMMES
vs.
EDWARD W. BURBANK. } No. 4887.

145 Defendant and appellant respectfully petitions for a rehearing in this cause, on the grounds that this honorable court erred:

1. In not considering, and favorably to defendant, the point first raised in his brief, that plaintiff in his petition does not set forth or plead any defect in the title of defendant by and under which the latter claims ownership of the property sued for, and under which he obtained in good faith possession thereof, as distinctly held to be requisite by this court in the case of White vs. Lacroix, 24 Ann., 445. The plaintiff

first offered the record in the confiscation proceedings in the case of The United States vs. Six Lots of Ground, property of Thomas J. Semmes, No. 7643 of the docket of the United States district court, including the marshal's deed, wherein, by the deed at least, title, whether good or bad, had been given to the defendant of the lot in controversy; and then, in argument, contended that defendant's title was invalid. It is respectfully submitted that to authorize this, plaintiff, in his petition, should have specially alleged the defects therein.

2. In not considering, and favorably to the defendant, the second point in his brief, that no previous tender had been made of the price paid by defendant to the marshal, and which subsequently had been, under order of court, paid to various creditors of plaintiff having privilege and mortgage on the property, as distinctly held to be
146 requisite by this court in the case of Barelli vs. Gauche, 24 Ann., 324. In that case the allegations in plaintiff's petition, as stated in the opinion of the court, were "that the sheriff's sale, purporting to be an adjudication of the property to the defendant, is null and of no effect." The principal grounds alleged as rendering the sheriff's sale null were "that no seizure of the property was ever made by the sheriff; that the sale was made after the expiration of the fieri facias, no duly certified copy thereof having been issued within twenty-four hours after the fieri facias was returned; that the amount bid at the sale did not exceed the amount of the prior mortgages, and no adjudication could legally take place." Certainly such defects in defendant's title were as absolute as those claimed in argument, not plead, in the case at bar. And these allegations were held as established by proof by the district judge, and the adjudication by the sheriff was decreed to be null and void; and yet it appearing by the record the price paid by the purchaser had, in part at least, been paid "in discharge of debts due at the time of sale by the plaintiff, and having mortgage and privilege on the property," this court held that "equity requires the plaintiff should have tendered to the defendant, before the institution of this suit," the amount so paid, and which ruling was reaffirmed by this court on rehearing granted.

147 3. In not considering and favorably to defendant, his plea under the fifth and sixth sections of the act of Congress of the 17th July, 1862.

This plea was formally made, and reasons in support of it stated in brief.

It is respectfully submitted that each of the foregoing points were presented for the consideration of the court. The first two have, in other cases, been held worthy of consideration. Like consideration is again asked for them by this court.

The third point is based upon the special provision of a Federal statute. The facts essential to the plea are of record, having been admitted by the plaintiff (page 182); and therefore it is respectfully submitted the plea must be considered, and adjudged adversely, before defendant can properly be evicted of his possession.

And this is asked as mere justice to the defendant, in order that, should the plea be overruled by this honorable court, the issue on the right thus claimed under a Federal statute may be clearly drawn in case a review of the decision of this court should be sought from the Supreme Court of the United States.

4. Without rearguing the only point in the case considered by the court, attention is respectfully drawn to the fact that the court leaves out of consideration the fact that, although no lot of the five, conveyed

by the marshal's deed, is described in the libel as No. 15, yet all
148 the proceedings—the libel, monition, and decree of condemnation—refer to five lots, and all belonging to T. J. Semmes; and yet, on the mere ground of strictly holding to the allegations of the libel, the practical conclusion of the court is, that only four of those lots were libelled and condemned. Thus an error in simple description of number—and evidently a clerical one, and one either never drawn to the attention of the Federal court, or not considered worthy of consideration during the contest therein on the merits of defendant's title—is made the substantial ground for decreeing null and void defendant's title; a title, not only emanating from Federal authority, but subsequently thereto recognised and declared valid by the circuit and Supreme Court, and the price thereof previously distributed by the district court among plaintiff's creditors.

It is further submitted, that under no view of the case can defendant be held as in possession of the property otherwise than in good faith.

1. He acquired the same as the last bidder at the marshal's adjudication. Whether or not the marshal was strictly authorized to offer the lot in question under the decree to sell six lots, five of which were situate in the same square, or the court to assume jurisdiction of the price and distribute the same, yet, so far as good faith in the bidders was concerned, no title, though defective, could be said to have been
149 more honestly acquired.

2. But suppose the adjudication was defective, yet the possession which the marshal held of the lot, and which possession he transferred to the defendant, was a valid possession under the fifth section of the confiscation act of the 17th July, 1862, authorizing and requiring the seizure of all the estate and property, money, stocks, and assets of the persons hereinafter named; for the marshal's possession and seizure of lot 15 must be considered, under the ruling in the confiscation cases (20 Wallace, 109), as authorized by the President. It is, therefore, submitted that the court erred in rendering judgment against defendant for fruits and revenues from the 27th December, 1866. The right to such revenues could only date from the institution of the suit.

Wherefore, defendant respectfully asks for a rehearing.

(Signed) FELLOWS AND MILLS.

Rehearing refused.—Extract from minutes.

WEDNESDAY, *May* 24, 1876.

The court was duly opened.

Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

His honor the chief justice pronounced the judgment and decree of the court in the following case:

THOMAS J. SEMMES
vs. } No. 4887.
EDWARD W. BURBANK.

150 It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.—Filed May 30, 1876.

EDWARD W. BURBANK PL'FF IN ERROR,
vs.
THOMAS J. SEMMES, DEF'T IN ERROR. } No. 4887.

To the honorable the judges of the Supreme Court of the United States:

The petition of Edward Warren Burbank, a resident of the city of New Orleans and State of Louisiana, respectfully represents: That petitioner feels aggrieved by a final judgment rendered in the supreme court of the State of Louisiana, on the day of May, A. D. 1876, in the suit entitled "Thomas J. Semmes vs. Edward W. Burbank," and numbered 4887 of the docket of said supreme court. That in said suit, said Edward Warren Burbank, by his special pleas and answer, claimed title and possession to the real estate claimed from him by said Thomas J. Semmes, under the provisions of the act of Congress of the United States entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved 17th July, 1862; and by said pleas and answer said Edward Warren Burbank, as well under the provisions of said act as by the exercise of an authority thereunder by the district court of the United States for the eastern district of Louisiana, specially claimed and
151 set up his certain and exclusive right of ownership and possession of the property claimed by said Thomas J. Semmes in said suit; and which defendant Burbank's right and title so said property, under said act of Congress, were further claimed by this petitioner in his application for rehearing, and wherein the decree first rendered by said supreme court, and the decree rendered in the matter of the petition for rehearing by said court, were against the right and title thus set up, plead, and claimed by your petitioner, under said statute and act of Congress, and right and title thus claimed were denied, as more fully shown by the record of said suit, No. 4887, to which reference is respectfully made.

Wherefore, petitioner prays that he be granted a writ of error from said judgment and decree of said supreme court of Louisiana, by the Supreme Court of the United States, the same to operate as a supersedeas, upon filing bond in sufficient amount and with good, sufficient, and solvent security, conditioned according to law, the same to be returnable on the first day of the next ensuing term of said court; that your honors will direct all needful citation to issue, and otherwise order as the law and the necessities of the case require.

(Signed) FELLOWS AND MILLS,
Att'ys of Edward W. Burbank.

I allow the writ of error in this case according to the prayer of the foregoing petition, May 27, 1876.

(Signed) JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

152 *Writ of error.—Filed May* 30, 1876.

EDWARD W. BURBANK, PLAINTIFF IN ERROR,
versus
THOMAS J. SEMMES, DEFENDANT. } No. 4887.

Allowed May 27, 1876.

(Signed) JOS. P. BRADLEY,
Asso. Just. S. C. U. S.

Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana in pursuance of the statute in such cases made and provided, this 27th day of May, one thousand eight hundred and seventy-six.

(Signed) FELLOWS AND MILLS,
Attorney of Plaintiff in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, holding sessions in New Orleans, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court, before you or some of you, being the highest court of law and equity of the State in which a decision could be had in the suit between Thomas J. Semmes, plaintiff and appellee, and Edward Warren Burbank, defendant and appellant, entitled "Thomas J. Semmes vs. Edward W. Burbank," numbered 4887 of the docket of your said court, wherein was drawn in question the construction of a statute of the United States, and the
153 decision was against the right, title, and privileges specially set up and claimed under said statute, a manifest error hath happened, to the great damage of the said Edward Warren Burbank, defendant and appellant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 27th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Bond for writ of error.—Filed May 30, 1876.

Supreme Court of the United States.

154 THOMAS J. SEMMES, PLAINTIFF AND APPELLEE,
vs.
EDWARD WARREN BURBANK, DEFENDANT AND APPELLANT. } No. 4887.

Know all men by these presents that we, Edward Warren Burbank and Milton Benner, of the city of New Orleans, in the State of Louisiana, are held and firmly bound unto Thomas J. Semmes, of the said State and city, in the sum of one thousand five hundred dollars, to be paid to the said Thomas J. Semmes, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us,

jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, signed with our seals, dated this 26th day of May, 1876.

Whereas the above-named Edward Warren Burbank hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Louisiana, numbered 4887 upon its docket:

Now, therefore, the condition of this obligation is such that if the above-named Edward Warren Burbank shall prosecute his writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) EDWARD WARREN BURBANK.
(") MILTON BENNER. [SEAL.]

Sealed and delivered in presence of—
(Signed) W'M REED MILLS.

I approve the within bond May 27th, 1876.
(Signed) JOS. P. BRADLEY,
Asso. Justice Sup. C't U. S.

155 *Certificate of the clerk.*

UNITED STATES OF AMERICA:

Supreme court of the State of Louisiana.

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing one hundred and fifty-four (154) pages contain a full, true, and complete copy of the transcript of the proceedings had in the fourth district court for the parish of Orleans in a certain suit wherein Thomas J. Semmes was plaintiff and Edward W. Burbank was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said defendant, which appeal is now on the files thereof under No. 4887.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court at the city of New Orleans this eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, and in the hundred and first year of the Independence of the United States of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

156 THE UNITED STATES OF AMERICA:

The President of the United States to Thomas J. Semmes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein Edward Warren Burbank is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Edward Warren Burbank, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 27th day of May, in the year of our Lord one thousand eight hundred and seventy-six.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

(Indorsed:) No. . Edward W. Burbank, plaintiff in error, vs. Thomas J. Semmes, defendant in error. Citation.

Marshal's return.

Received May 29, 1876, by the U. S. marshal, and on the 31st day of May, 1876, served a copy hereof on Thomas J. Semmes, defendant in error, by handing the same to him in person in the city of New Orleans.

S. P. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 2d day of June, 1876, personally appeared before me the subscriber, S. W. Reed, & makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 2d day of June, 1876.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 169. Edward W. Burbank, plaintiff in error, vs. Thomas J. Semmes. Louisiana sup. court. Filed 29th September, 1876.

IN THE

Supreme Court of the United States.

October Term, 1878.

EDWARD W. BURBANK,
PLAINTIFF IN ERROR,
vs.
THOMAS J. SEMMES.

No. 169.

Brief for E. W. BURBANK, Plaintiff in Error.

August 7, 1863, under the provisions of the "act to "suppress insurrection, to punish treason and rebellion, "to seize and confiscate the property of rebels, and for "other purposes," and its amendment, (12 S. L., 589–627,) the United States Government commenced proceedings in the United States district court for the district of Louisiana to confiscate certain real estate therein described in the city of New Orleans, belonging to Thomas J. Semmes. After very many proceedings, in which the regularity and legality of the action of the Government's officers were contested, a final judgment was rendered by the circuit court and affirmed by this Court, in which "*the original decree of* "*confiscation and the proceedings thereon*" were definitively ordered to "STAND CONFIRMED."

United States *vs.* Six Lots of Ground, 1 Wood's Reports, 234, June 20, 1872.
Semmes *vs.* United States, 91 U. S., 21, Oct. 25, 1875.

Semmes was pardoned by the President, October 19, 1865; and from April 9, 1868, to the final judgment, took a prominent part in the proceedings before the national tribunals in this confiscation case.

The plaintiff in error became the purchaser at the marshal's sale of the confiscated property, June 15, 1865. Deed on page 52 shows that the property was sold in block, in fee or full ownership, for $10,500, of which $5,250 was paid in cash, and the balance in purchaser's notes for a like amount at six months in favor of the clerk of the United States district court.

The present controversy originated December 27, 1869, when Thomas J. Semmes instituted a petitory action in the fourth district court of New Orleans, averring the possession in bad faith of Burbank, and claiming title in himself as "owner of a certain lot of ground in the first district "of the city of New Orleans, in the square bounded by "Annunciation, St. Thomas, Benjamin or Thalia, and Ed- "ward or Melpomene streets; said lot is *the front part* "of a lot designated by the number 15 on a plan drawn "by B. F. Nichols, architect, dated 31st May, 1853, and "deposited in the office of T. O. Stark, notary public, in "this city, as plan No. 203; *the whole* of said lot No. 15 "was acquired by Mrs. Abigail L. Slark from B. M. Whit- "lock by act passed before said Stark, June 26, 1857, and "measures twenty-two feet ten inches and three lines front "on Edward street, seventeen feet in width in the rear, and "one hundred and twenty feet eleven inches seven lines in "depth on the division line of lot No. 14 on the same

"plan, and one hundred and twenty feet on the opposite "line; and the front part of said lot No. 15, owned by the "petitioner, measures twenty-two feet ten inches and three "lines front on Edward street by a depth of sixty feet, and "was acquired by petitioner from the said Mrs. Slark by "an act of exchange passed on the 19th May, 1858, before "D. J. Ricardo, late a notary in this city, a duly certified "copy whereof is hereto annexed as part hereof." "That "in the year 1859 *he erected valuable buildings on said* "*lot*, and otherwise improved the same, and *the said lot* "*and buildings* are worth *ten thousand dollars*." "That "June 17, 1865, Edward W. Burbank unlawfully obtruded "himself into and took possession of *said lot and build-* "*ings*, and has ever since withheld, and now unlawfully "withholds, possession of the same from petitioner." He prays to be decreed owner of the said lot *and improvements*, and entitled to possession thereof, $5,000 per annum till restored to possession, interest from judicial demand, costs, and all general relief.

See Petition and Document, Record, p. 1 *et seq.*

Burbank admitted his possession of the premises, and claimed ownership under the marshal's deed of June 15, 1865; he also defends under the provisions of the act of Congress before alluded to, and particularly the fifth and sixth sections of the said act of July 17, 1862, and the proclamation of the President of July 25, 1862.

Record, pp. 4, 5.

The judgment of the fourth district court of New Orleans was in favor of the plaintiff, Semmes. Burbank appealed to the supreme court of Louisiana, where the judgment was

affirmed, with five dollars *per month* damages. The case is here under R. S. U. S., 709.

Record, p. 75.

The plan on page 10 of the Record shows the location of the property. Semmes, by act of June 26, 1857, bought lots Nos. 14, 16, and 17. (Record, p. 8.) And at or about the same time, a part of lot No. 18, but the record contains no information of the way in which this part of lot No. 18 was acquired by Semmes. This amount of *superficies*, almost if not exactly as bought by Semmes, was regularly included in the libel. Upon this very property had been erected a house costing $15,000, (Record, p. 47,) also included in the libel. The alleged difficulty arises from this fact: that prior to the erection of the improvements, to wit, on May 19, 1858, Semmes had made an exchange with Mrs. Slark, giving her the rear portion of lot No. 14 and receiving in exchange a front portion of lot No. 15. This was evidently for the mutual convenience of the parties, and benefited both. It gave Semmes a continuous side to his lot on Edward street, his house fronting on Annunciation street. It gave Mrs. Slark an additional depth to her three lots, Nos. 18, 19, and 20. Semmes' object was to constitute his isolated lots an entirety. His own evidence makes this very clear.

Record, p. 6.

The marshal's deed and the plan by which he sold represent the whole superficies as bought by Burbank—lots 14, 15, 16, 17, and 18, "which run the whole length and "breadth"—"a continuous front on Edward street, from the "corner of Annunciation." "Weed," evidently the mar-

shal's keeper, "had possession of all the five lots that are "marked out here when I visited the place."

Record. p. 67.

No notice was given to the public of the exchange on which the plaintiff now relies. The act never was registered. The lot acquired by Mr. Semmes under this act of exchange seems to have added a special value to his property in lots 16, 17, and 18. To take away from the rear of these lots the property thus acquired would be a peculiar detriment both to their money-value and value in use. This is fully alluded to and proved by Jamison's testimony on Record, page 7; Billings', page 65.

This exchange not being recorded, was not known to the pleader who drew up the libel. The property is set forth therein exactly as Semmes seems to have acquired it, so far as lots Nos. 14, 16, 17, and 18 are concerned; but lot No. 14 is embodied twice in the libel—once by itself, (Record, p. 11,) and next *in connection with lots Nos.* 16 *and* 17—"lot No. 16 forming the corner of Edward and "Annunciation streets."

This discrepancy in the description of the property, and the failure to make special and particular mention of lot No. 15 in any way in the libel, led the State courts to believe that Burbank's title was absolutely null as to part of lot of No. 15, claimed herein by plaintiff; and all the proceedings of the three national courts—district, circuit, and supreme—from 1865 to October, 1875, forming a large portion of the record here, were adjudged mere waste paper as to lot No. 15. And the supreme court of Louisiana went so far as to amend the judgment of the lower court, and award "five dollars per month *for rent from December* "27, 1866, until possession of said property is delivered to "plaintiff," Semmes.

Record, p. 76.

The lots Nos. 14 and 15 have precisely the same measurement on three sides, *viz:* 22 feet 10 inches 3 lines front on Edward street, 17 feet width in the rear, and 120 feet 11 inches 7 lines in depth. The difference between the other side lines is so small that, for all practical purposes, the two lots may be considered of precisely the same size.

Assignment of Errors.

First. The State court was without jurisdiction to annul the judgments of the national courts in the proceedings against six lots of ground, either directly or collaterally.

Second. Or, if it could rightfully entertain jurisdiction of this suit, it decided erroneously in this:

It gave effect to alleged imperfections in the procedure within the national jurisdiction, and pronounced the entire proceedings as to the superficies in question void on insufficient grounds.

It lost sight of the essence of the case, and decided it on the accidental and immaterial; the essence was the property as a whole, and the superficies seized and sold belonging to Semmes; not the numbers of the component lots on the notary's plan.

It overlooked the acquiescence of Semmes in the alleged imperfections; and failed to see that his actions estopped him from claiming the property.

It treated the marshal's sale as an adjudication of each lot separately; whereas it was a sale in block.

Third. There was error given to the operation of pardon and amnesty, generally; and specially, to their effect on the act of July 17, 1862, sections five and six. And, indeed, the lower court erred from the entire omission to notice the point in any way.

Fourth. And in holding that Burbank was possessor in bad faith, and mulcting him in damages.

ARGUMENT.

The reasoning by which the lower court reached its conclusion is very short and exceedingly clear. The plaintiff claims lot No. 15 as his property. The defendant claims it as his. Semmes shows an unrecorded deed of exchange. Burbank relies on a marshal's deed of sale transferring him the lot, along with other lots, by virtue of certain confiscation proceedings. "By the decree of condemnation his (Semmes') title was divested of lots 14, 16, 17, and part of 18. Lot 15 was not mentioned either in the libel, the monition, or the decree of condemnation. The *ven. ex.* authorized the sale of the property described in the libel. *The marshal's deed, however, embraced lot* 15.

"It is clear the marshal could only make a valid title to the property embraced in the decree of condemnation, for that was all that became vested in the United States. And he could not sell property not authorized by the writ put into his hands for execution. Plaintiff's title has never been divested as to the property in controversy, and he must recover in this suit."

See Opinion of Supreme Court of Louisiana, Rec., p. 76, 28 Louisiana Annual Reports, p. 694.

A sale *per aversionem* is a sale of movable or immovable property in block; not so much for each lot or separate portion, but so much for the whole. The five lots of ground proceeded against and sold in the confiscation proceedings were put up and sold by the marshal as the property of T. J. Semmes, in the square bounded by certain

streets. This property had been seized under the written authority of the United States prior to the judicial proceedings, which were *in rem*. It was situated at the corner of the square; it was improved by a $15,000 house. It was composed of five lots, making one property. It was assessed and taxed by the State of Louisiana as one property. It could not be divided *in kind* according to the literal measurement of the lots, even at the present time, without a large diminution in its value and great loss and inconvenience. Not the slightest indication existed on the ground of the division of the property into lots. The property is, in fact, but one lot, and located atthe corner of Annunciation and Melpomene streets. And Semmes is not shown to own any other property in the square. As the sale of a single property, the price obtained by the marshal was distributed among the privilege and mortgage creditors by the U. S. district court.

Rec., pp. 43, 44, *et seq.*

Under these circumstances, we do not hesitate to say that the precise limitations of the property into numbers and lots, with the measurements of all sides of the latter, were non-essential elements in the description of the property. The gross amount of superficies is given with sufficient accuracy; the corner, the buildings, and improvements, the front on Annunciation street, the reference to the plan, gave ample notice to all buyers of the very property the marshal was to sell. That such was the case appears from the intervention of the Merchants' Insurance Company, on Record, page 16, in which it is expressly declared "that these lots (describing lot 15 *inter al.*) belonging to said Semmes have been seized by process from "this honorable court, and are prayed to be decreed as

" forfeited," &c. And out of the proceeds of the sale to Burbank, the company was paid a large sum of money. (Record, pp. 16 and 45. See also the intervention of Mrs. Matilda Semmes, Record, p. 45.) Both intervenors treat the property libelled as "a lot or portion of ground," embracing lot No. 15.

Falsa demonstratio non nocet cum de corpore constat.

Indeed, if Semmes had sold lots 16 and 17 by their precise measurement, with the buildings and improvements thereon, unless he expressly reserved his lot No. 15 from the operation of the contract, it would pass to the purchaser. The yard and cistern are accessories to the main building, and go with the principal.

See "Curtilage" in Shep. Touchstone, *94.
Bennet *vs.* Bittle, 4 Rawle, 339.
Rogers *vs.* Smith, 4 Penn., 93–101.

The sale in block was alluded to in Dunlap *vs.* Dunlap, (12 Wheaton, 574–578;) and error in description of real estate in Newman *vs.* Jackson, (12 Wheat., 570.)

And no farther argument is needed to show that the Louisiana court entirely mistook the essential character of the sale by the marshal to Burbank; that court has converted a sale in block into a sale by measure; a judicial sale of one lot or portion of ground into a sale of five or more lots of ground; or of one superficies into five or more superficies, in which the former defines the boundaries generally, and the latter by exact measurements. Nothing could be farther from the intention of the parties than this construction of their acts. The point was brought before the State court in a very clear and definite statement by the counsel of Burbank in their application for a rehearing, under their No. 4 on page 77 of the Record. It is a satisfactory answer, of itself, to all of plaintiff's pretensions.

II.

The record from the national court of the confiscation proceedings shows that long after the marshal's sale, (over three years,) and eighteen months before he instituted his present petitory action, Semmes filed his claim for "the "following described property libelled herein," and averred his ownership of the same. He describes the property as "lots Nos. 14, 16, 17, and part of lot No. 18, on plan 203, "deposited in T. O. Stark's office, notary public, drawn "by B. F. Nichols, architect, and dated May 31, 1853, to-"gether with the buildings and improvements thereon, and "states that he is the true and lawful owner thereof." (Record, page 55.) And his answer to the libel on page 56 repeats the above-quoted description of the property. At this time *Semmes ignores the facts that five lots are embraced in the libel, and that he has exchanged the rear of lot No.* 14 *for the front of lot No.* 15.

He sees, and knows, and acquiesces in the sale by the marshal to Burbank of lot No. 15, and *makes no claim to it.*

By his action he induces the district court to believe that he is the owner of all the property sold by the marshal, (see "Hearing of the Rule," Rec., p. 50, making Burbank a party;) procures from the district court a decree dismissing the libel and restoring all the libelled property to him upon the payment of all costs. He stands by this decree in its various stages through the circuit court and the Supreme Court, occupying several years. He has taken all the chances of the litigation. As to the United States and its assigns, Semmes is forever estopped from claiming lot No. 15. He cannot at the same time deny this estoppel and be in good faith.

See Gridley *vs.* Conner, 2 La. An., 417, quoting Sprigg *vs.* Bank of Mt. Pleasant, 10 Pet., 257.

III.

And the question of jurisdiction in the State court to annul a judicial sale made by order of the Federal court is of the gravest importance.

Abstracting from the consideration of this point all that has been said on the question of estoppel, the jurisdiction of the Federal court as to the *res* may be regarded in two lights; *first*, the *res* may be one thing, a whole, an entirety; or, *second*, it may be several distinct and separate things, entirely independent of each other. The State courts regarded the case from the latter point of view exclusively; and, as we have seen, changed the contract between the United States and Burbank from a sale, *per aversionem*, of the whole property in block, into a sale at a certain price for each lot separately. This view is destructive of the whole jurisdiction of the Federal courts over the entire property. The confiscation of house and land, if confined to the naked house and the naked land, without embracing "all the buildings and improvements thereon, rights, ways, "privileges, hereditaments, and appurtenances to the same "belonging and in any wise appertaining," as stated in the libel as well as in the marshal's deed, would become a virtual nullity. But these are *the very things* which have been seized, libelled, monitioned, sold, and delivered by the marshal to Burbank as the property of Semmes. To take *one* of these things away from Burbank on the ground of want of jurisdiction in the Federal court, as has been done by the judgment of the State courts, is virtually to deny and set aside the jurisdiction as to all.

The question for the State court was: Had the United States courts jurisdiction over the *locus in quô*, the lot No. 15, as described in the petition in this suit? For the sake of the argument, let us admit that such a lot as No. 15, as

described in Semmes' petition, was mentioned neither in the libel nor the monition, nor the decree of condemnation; but was embraced in the marshal's deed. The marshal, it is admitted, had a mandate to sell five lots of ground, and did sell them to Burbank. Five lots were seized, libelled, and sold. These five lots were conveyed and deeded to Burbank by the marshal, under the direction of the court, by conveyances that "shall fitly and efficiently effect "the purposes of this act, and vest in the purchasers of "such property good and valid titles thereto," under the acts of Congress before cited. The State court says only *four* lots were sold, because, although five were mentioned in the libel, etc., yet lot No. 15 was not embraced in the proceedings. The question was one both of law and fact. It was a question of identity, and not a question of jurisdiction. Into that question of identity the State court could not inquire in order to defeat the Federal jurisdiction. Such an inquiry is entirely analogous to that which was attempted in another Louisiana case, where citizenship such as is required by the Constitution to confer jurisdiction had not been set forth in the record of the Federal court, and where this citizenship had been fully proved not to exist. In spite of this adverse proof, the Federal jurisdiction was maintained.

Erwin *vs.* Lowry, 7 Howard, 173.
See also Grignon *vs.* Astor, 2 How., 319, and cases cited.

It is clear, from all these authorities, that the State courts erred in treating the confiscation-proceedings as null and void as to lot No. 15, and that they were *without* the sphere of their jurisdiction to so decree. The matter was entirely *within* the exclusive sphere of Federal action.

IV.

Under the 5th and 6th sections of the confiscation act, it is provided—"And it shall be a sufficient bar to any "suit brought *by such person* for the possession or the "use of such property, OR ANY OF IT, to allege and prove "that he is *one of the persons described in this section.*"

The force and efficiency of this legal provision as a complete defence in this case by Burbank seems to be freely admitted; but it is contended that, by pardon and amnesty, the law is no longer operative upon Semmes.

This is a grave and palpable error. The bar of the statute was a perpetual defence, *a vested right* in the purchaser of the property. Neither of the Departments of the Government could deprive Burbank of this acquired right under the statute. No pardon and no amnesty could by possibility destroy THE FACT on which rested Burbank's defence. And this fact was freely admitted in the record, page 66, at foot. As to Semmes' real estate confiscated legally or illegally, in possession of others, he is *civiliter mortuus.* All his property was liable to seizure and confiscation; and the bar is made good for all. Indeed, the expression "ANY OF IT" applies to the whole as well as to every part of his property; "all the estate and property, "moneys, stocks, and credits of such person shall be liable "to seizure as aforesaid." The statutory bar was an inexpugnable element which entered into the contract made by Burbank with the United States when he bought the property. He cannot be deprived of it without a direct, downright, palpable repudiation of the contract made with him by the Government of the United States. In support of these plain principles of law, we refer to Bigelow *vs.* Forrest, (9 Wall., 339–352,) for an argument.

Supreme Court of Louisiana.

EDWARD W. BURBANK, Plaintiff in error,

versus

THOMAS J. SEMMES, Defendant in error.

THOS. J. SEMMES,
In Propria Personæ.

Supreme Court of Louisiana.

EDWARD W. BURBANK, Plaintiff in error,

versus

THOMAS J. SEMMES, Defendant in error.

This suit was instituted 27th December, 1869, to recover a piece of ground in the City of New Orleans, in the square bounded by Annunciation, Benjamin, St. Thomas and Edward or Melpomene streets.

The piece of ground in question is known as part of lot No. 15, on a plan drawn by B. F. Nichols, dated 31st May, 1853.

Defendant in error was owner of lot No. 14 on the same plan; Mrs. Slark was owner of lot No. 15, an exchange was made between the parties by which the defendant in error acquired that part of lot No. 15 which is in controversy. (See act of exchange.)

The plaintiff in error does not dispute the title of the defendant in error, but alleges that he purchased the lot in question under judicial pro-

ceedings, instituted by the United States to confiscate the property of the defendant in error under the Act of 1862, in consequence of his participation in the late rebellion.

On the other hand, the defendant in error does not question the validity of the confiscation proceedings, but denies that those proceedings embraced the lot in question.

His contention is, that the lot in question was never seized or libeled or condemned and therefore his title was never divested.

The case is therefore one of fact; the Supreme Court of the State decided that question in favor of the defendant in error.

An inspection of the proceedings determines the question.

The libel is directed against six lots, the property of Thomas J. Semmes; the only property in the square bounded by Annunciation, St. Thomas, Benjamin and Edward streets described in the libel are lots 14, 16, 17 and part of lot 18. The lot 15 is not mentioned or referred to, and the defendant in error never owned all lot 15, he acquired only half of that lot from Mrs. Slark, and in exchange transferred to her half of lot 14.

The order of publication giving notice of the proceedings only refers to the property described in the libel.

The warrant of seizure issued to the Marshal, contained a description of property precisely similar to that setforth in the libel.

The monition follows the libel verbatim et litteratim in the description of the property proceeded against.

The decree of condemnation declares "that the "six lots of ground with the buildings thereon, &c., "*fully described in the libel* be and they hereby con- "demned as forfeited to the United States."

This decree embraced the four lots 14, 16, 17 and part of lot 18 in the square before mentioned, and two other lots of ground in another square, constituting together the six lots condemned.

The venditioni exponas merely authorizes the sale of the property described in the libel.

The Marshal's return on the venditioni exponas declares that he sold to Burbank, the "property within named," and that property was the property "described in the libel on file."

In no part of the proceedings sanctioned by the court does lot 15 figure, and it makes its first appearance in the *Marshal's deed* to Burbank; that deed embraces lots 14, 15, 16, 17, and part of lot 18.

The defendant in error really owned only part of lot 14, part of lot 15, part of lot 18, and all of lots 16 and 17. He now contends, that the confiscation

proceedings did not forfeit to the United States the part of lot 15 owned by him, and therefore the Marshal's deed conveyed no title to the plaintiff in error as to that piece of ground.

It is too clear for argument, that it is the *decree* of condemnation which divests the owner of the title to his property, and vests it in the United States; it is equally clear, that as the proceedings are in rem, it is only the property described in the libel, and monition and warrant, which constitutes the res adjudicated upon, and the title to which is divested by the decree.

Until the property is condemned, there is no authority to sell, for it is only by virtue of the decree of condemnation that the United States acquires title, and can give authority to sell. See confiscation cases, 20 Wallace, 113.

If any disability on the part of the defendant in error ever existed, to institute suit for the recovery of this property, it was removed by the pardon found in the record issued by President Johnson in 1865.

The amnesty proclamations of September 7, 1867, 4th July, 1868, and 25th December, 1868, are also relied on by defendant in error. United States vs. Klein, 13 Wallace, 141.

Respectfully submitted,

THOS. J. SEMMES,

In Propria Personæ.